TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1927~~ 1933

No. 6, Original

THE STATE OF LOUISIANA, COMPLAINANT,

vs.

THE STATE OF MISSISSIPPI

IN EQUITY

FILED MAY 19, 1925

( )

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 9, Original

THE STATE OF LOUISIANA, COMPLAINANT,

vs.

THE STATE OF MISSISSIPPI

IN EQUITY

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

9, Original

THE STATE OF LOUISIANA, Complainant,

versus

THE STATE OF MISSISSIPPI

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT—May 4, 1925

Now comes the complainant, by counsel, and moves the Court for leave to file the Bill of Complaint hereto attached. Percy Saint, Attorney General of the State of Louisiana. John Dale, Counsel for Complainant.

[fol. a-2] IN THE SUPREME COURT OF THE UNITED STATES

BILL OF COMPLAINT—Filed May 19, 1925

To the Honorable William H. Taft, Chief Justice, and to the Associate Justices of the Supreme Court of the United States of America:

The State of Louisiana, one of the United States of America, by Percy Saint, its Attorney General, brings this bill of complaint against the State of Mississippi, also one of the United States of America, appearing herein through Henry L. Fuqua, Governor of said State, and Percy L. Saint, Attorney General thereof, and assistant counsel, with leave of your Honorable Court first obtained, respectfully complaining, shows unto this Honorable Court:

I

That a controversy has arisen between complainant, the said State of Louisiana, and the State of Mississippi, rela-
[fol. a-3] tive to a portion of the boundary line between

them; that no agreement can be reached between said States settling said boundary, and that it is necessary that same be determined by judgment of your Honorable Court in the exercise of its original jurisdiction.

II

That the State of Louisiana was admitted into the Union of the United States of America, by Act of Congress found in chapter 50 of the United States Statutes at Large, Vol. 2, page 701, approved April 8, 1812, and therein the boundaries of said State of Louisiana, in the preamble of said Act, were described as follows:

"Whereas, the representative of the people of all that part of the territory or country ceded under the name of 'Louisiana' by the treaty made at Paris on the 30th day of April, 1803 (8 Stat. at Large, p. 200), between the United States and France, contained within the following limits, that is to say:

1st. Beginning at the mouth of the River Sabine; thence by a line drawn along the middle of said river, including all islands to the 32nd of latitude; thence due north to the northernmost part of the 33rd degree of north latitude; thence along said parallel of latitude to the River Mississippi; thence down said river to the River Iberville; and from thence along the middle of said river to Lakes Maurepas and Pontchartrain to the Gulf of Mexico; thence bounded by said gulf to the place of beginning, * * * etc."

2nd. That by Act of Congress, found in the United States Statutes at Large, Vol. 2, p. 708, Chap. 57, approved April [fol. a-4] 14, 1812, additional territory was added to the then existing State of Louisiana, which added territory gave to the State of Louisiana all that territory south of the 31st degree of north latitude lying between the Mississippi River and the Pearl River, and extending down the Pearl River to the Gulf of Mexico, but for reasons shown it is not necessary to particularly define said additional territory.

3rd. That according to the foregoing description the eastern boundary of that portion of the State of Louisiana lying between the 33rd and 31st degrees of north latitude

was formed by the Mississippi River, beginning at the northeast corner of said State and extending in a general southerly direction to the 31st degree of north latitude, the thread, or center, of said river forming said boundary originally. That said boundary was also recognized by the Constitution of the State of Mississippi as the original western boundary of that part of the State of Mississippi between the 33rd and 31st degrees of north latitude.

III

That the Parish of East Carroll, State of Louisiana, is on the Mississippi River, between the 33rd and 31st degrees of north latitude. That said river is a navigable stream.

That in said parish there are large tracts of land known as Willow Point, and adjacent property, which is a part of the territory of the State of Louisiana.

That said original tract of land was composed of Sections 1, 2, 3, 4, 5, 6, 7, 8 and 9 in Township 19 North, Range 14 East; and also adjacent sections in Township 18 North, [fol. a-5] Ranges 13 and 14 East, situated on the Mississippi River in said parish and State.

IV

That the controversy between the said State of Louisiana and the said State of Mississippi arose from the following facts:

The land on the Mississippi River in the State of Mississippi opposite the lands on said Willow Point and adjacent properties gradually wore away by erosion, caved into the Mississippi River and disappeared, while the shore of the Mississippi River on the Louisiana side at Willow Point and adjacent properties was gradually extended in an easterly direction by accretions formed successively and imperceptibly to the soil of said shore, until it extended easterly to about the distance of approximately five miles from the original Louisiana shore.

That as the Louisiana shore of the Mississippi River was thus extended in an easterly direction by alluvion formed by accretion, the thalweg, or thread of the channel of the Mississippi River was likewise extended in an eastern direction.

That as the thread of said channel was thus extended easterly the boundary line between the States of Louisiana and Mississippi was also extended easterly in a like manner and in a like distance.

That after the boundary line between the said States had thus extended approximately five miles easterly, the Mississippi River, about 1912 and 1913, suddenly abandoned its [fol. a-6] old channel and formed a new channel by cutting same through the accretion attached to the Louisiana shore, heretofore described, said change of channel being made rapidly and violently by an avulsion cutting off some five or six thousand acres of land and leaving most of same eastward of the new channel thus made by the Mississippi River.

That at the time of said avulsion the boundary line between the said States of Louisiana and Mississippi was in and remained in the center of the old channel, which was and is east of the new channel made by avulsion.

That said old channel of the Mississippi River east of that made by said avulsion gradually filled with silt until the water ceased to flow through said old channel.

That when the water thus ceased to flow through said old channel and became stagnant, the boundary line between said States of Louisiana and Mississippi then became fixed in the middle of the old navigable channel, and was not afterward affected or changed by the filling up of said old channel, and that said line is now the boundary line between the said States of Louisiana and Mississippi, at that place, which boundary line is more definitely described as follows:

At the point to which the boundary line of 1823, between said States had been extended by accretion, being the center of the old channel or thalweg of the Mississippi River, as it became fixed by reason of the said avulsion of 1912 and [fol. a-7] 1913, shown in this complaint, and extending from a point approximately opposite Salem Landing to a point approximately opposite lower Henderson Landing as indicated on Mississippi River Commission Map published in 1916, and being Exhibit E herein, and made part hereof by reference.

V

That complainant files herewith maps and surveys, and by reference makes the same a part hereof, and they are marked exhibits, as follows:

(1) A map and survey showing T. 19, R. 13 and 14 E., Land Dist. North of Red River, State of Louisiana, surveyed February and March, 1824, by Ephraim S. Ludlow, Deputy Surveyor, and of record in the United States Land Office, at Washington, D. C., marked "Exhibit A."

(2) A map and survey showing T. 18, R. 13, Land District north of Red River in the State of Louisiana, surveyed March, 1824, by Ephraim S. Ludlow, Deputy Surveyor and of record in the United States Land Office at Washington, D. C., marked "Exhibit B."

(3) A map published by the Mississippi River Commission, originally in 1883, showing in black the position of the Mississippi River at that time; and republished in 1900 showing by red lines the shore line surveys of 1894, marked "Exhibit C."

(4) A map published by the Mississippi River Commission showing the survey of 1882 in black, and showing in [fol. a-8] red the successive changes by erosion and accretion until 1907, as determined by surveys of said commission of 1894 and 1906, shown by sheet 17 thereof, and which map shows the changes in the Mississippi River involving the territory in dispute. Marked "Exhibit D."

(5) A map published by the Mississippi River Commission, in 1916, showing the Mississippi River in the territory in controversy herein, and showing the most easterly extent to which the accretion to Louisiana shore had extended prior to the avulsion of 1912 and 1913, and showing the location of said avulsion. Marked "Exhibit E." Shown by sheet No. 17.

(6) A map published by the Mississippi River Commission showing the territory in controversy, as per survey of 1913-1915, being Chart No. 47, showing open sand bar and kind of timber on the lands, on which map was marked by a surveyor, upon request, a red line showing the thalweg of the old channel of the Mississippi River about the time of the said avulsion, which red line shows the boundary line between said States of Louisiana and Mississippi. Marked "Exhibit F."

(7) A map made by C. H. West, Consulting Engineer, Greenville, Mississippi, Dec. 22nd, 1924 (blue print, Map No. 1), showing the river banks in 1823 in the territory in dispute herein. Marked "Exhibit G."

(8) A map made by C. H. West, Consulting Engineer, Greenville, Miss., Dec. 22nd, 1924 (blue print, Map No. 2), [fol. a-9] showing the river banks in 1882, in the territory in dispute herein. Marked "Exhibit H."

(9) A map made by C. H. West, Consulting Engineer, Greenville, Mississippi, Dec. 22nd, 1924 (blue print No. 3), showing the river banks in 1894 in the territory in dispute herein. Marked "Exhibit I."

(10) A map made by C. H. West, Consulting Engineer, Greenville, Mississippi, Dec. 22nd, 1924 (blue print No. 1), showing the river banks in 1913, in the territory in dispute herein, and also showing the avulsion of 1912 and 1913, marked cutoff, which map is marked "Exhibit J."

VI

That the State of Mississippi is claiming that the present boundary line between it and the State of Louisiana is approximately the same as it was in 1823, as shown by maps attached hereto and marked "Exhibits "A" and "B," and are claiming as Mississippi territory approximately all of the lands east of said line of 1823, which claim is without foundation in fact or law.

That the said State of Mississippi has sold lands east of said line and west of the channel of the Mississippi as it existed at the time of said avulsion of 1912 and 1913, and has issued patents therefor, as shown by certified copies of forfeited land patents Numbers 15644, 15554, 15555, 15556, 15557, 15558, 15559, 15660, 15576, 15792, made by R. D. [fol. a-10] Moore, Land Commissioner of the State of Mississippi, contained in four sheets attached together, made part hereof by reference, and marked "Exhibit K."

That the Sheriff and Tax Collector of Issaquena County, Miss., sold to the State of Mississippi on the 1st of March, 1897, for delinquent taxes for the year 1896, as shown on three sheets attached together, being certified copies made by R. D. Moore, Land Commissioner of the State of Missis-

sippi, made part hereof by reference and marked "Exhibit L."

But as a fact, all of said land is Louisiana territory, and the action of the State of Mississippi and the officials thereof in selling said land and issuing patents therefor, is illegal, null and void, and is an attempt to appropriate territory belonging to the State of Louisiana.

VII

That the sovereignty of the said State of Louisiana has thus been infringed by the State of Mississippi, and that it is necessary that the boundaries between said States at this point be determined by competent authority in order that each State may collect taxes on the property in dispute, which rightfully belongs to it, and that the territorial jurisdiction of each State should be fixed to enable each State to exercise its proper civil and criminal jurisdiction.

That Honorable Henry L. Whitfield is the Governor of the State of Mississippi and Honorable R. H. Knox is the Attorney General thereof, and the residence of each of them [fol. a-11] is in the City of Jackson, State of Mississippi.

Wherefore, being without remedy on the law side of this Court, the State of Louisiana prays that the State of Mississippi be made party defendant to this bill, and that a subpœna be issued and served upon the proper officers of said State of Mississippi, particularly Hon. Henry L. Whitfield and Hon. R. H. Knox, Attorney General thereof, and that it be required to answer the allegations hereof, but not on oath; that after all necessary orders and proceedings, there be a decree of your Honorable Court fixing and determining the boundary line between said States on the eastern part of East Carroll Parish, Louisiana, as follows:

At the point to which the boundary line of 1823, between said States had been extended by accretion, being the center of the old channel or thalweg of the Mississippi River, as it became fixed by reason of the avulsion of 1912 and 1913, shown in this complaint, and extending from a point approximately opposite Salem Landing to a point approximately opposite lower Henderson Landing, as indicated on Mississippi River Commission map published in 1916, and

being "Exhibit E," herein, and made part hereof by reference.

And to the end that the said line may be definitely located and fixed by the only court having jurisdiction to do so, it is prayed that a boundary commission be appointed by your Court to ascertain and designate the boundary line between the said State of Louisiana and the said State of Mississippi, [fol. a-12] and that said boundary commission be required to make the proper examination and delineate on maps prepared for that purpose, the true line as determined by this Court.

And that your Honors grant the State of Louisiana such other general relief to which it may be entitled.

The State of Louisiana, by Percy Saint, Attorney General. John Dale, of Counsel for the State of Louisiana. Richard F. Reed, Gerard H. Brandon, *Gerard H. Brandon,* Philip Hough, B. F. Young, John Dale, Jr., L. D. Dale, Solicitors for the State of Louisiana.

[fol. b] SUPREME COURT OF THE UNITED STATES

ORDER GRANTING LEAVE TO FILE BILL OF COMPLAINT AND PROCESS ORDERED RETURNABLE MAY 11, 1925

On consideration of the motion for leave to file a bill of complaint herein,

It is now here ordered that the said motion be, and the same is hereby, granted; and process is hereby ordered to issue returnable on Monday, October 5 next.

[fol. c] IN SUPREME COURT OF THE UNITED STATES

SUBPŒNA AND MARSHAL'S RETURN OF SERVICE—Filed June 13, 1925

THE UNITED STATES OF AMERICA, *ss*:

The President of the United States to the State of Mississippi, Greeting:

For certain causes offered before the Supreme Court of the United States, having jurisdiction in Equity, you are

hereby commanded that, laying all other matters aside, and notwithstanding any excuse, you be and appear before the said Supreme Court of the United States, holding jurisdiction in Equity, on Monday, October 5th, 1925, at the City of Washington in the District of Columbia, being the Seat of the National Government of the United States, to answer unto a bill of complaint of The State of Louisiana in the said Court exhibited against you.

Hereof you are not to fail at your peril.

Witness the Honorable William H. Taft, Chief Justice of the United States, at the City of Washington, the 19th day of May, A. D. 1925.

(Signed) Wm. R. Stansbury, Clerk of the Supreme Court of the United States. (Seal.)

Service of the above Subpœna and a certified copy of the Bill of Complaint therein mentioned are this Eighth day of June, 1925, accepted and acknowledged.

(Signed) H. L. Whitfield, Governor of the State of Mississippi. Rush H. Knox, Attorney-General of the State of Mississippi.

[fol. d] Office of the Marshal, Supreme Court of the United States, Washington, D. C.

Came to my hand the 22nd day of May 1925, and executed through acceptance of service in writing by H. L. Whitfield, Governor of the State of Mississippi, and Rush H. Knox, Attorney General of the State of Mississippi, on the Eight- day of June, 1925.

Witness my hand this 13th day of June, 1925, at the City of Washington.

(Signed) Frank K. Green, Marshal Supreme Court U. S.

[fols. e & e-1] In The Supreme Court of the United States

Answer in Chancery—Filed October 5, 1925

To the Honorable William H. Taft, Chief Justice, and to the Associate Justices of the Supreme Court of the United States of America:

The State of Mississippi, one of the United States of America, appearing herein through Henry L. Whitfield,

Governor of said State, and Rush H. Knox, Attorney General thereof, and assistant counsel, reserving unto itself the benefit of all exceptions by reason of the insufficiencies therein contained, answering the original bill of complaint exhibited against it in this Honorable Court, by the State of Louisiana, also one of the United States of America, says:

[fol. e-2] I

The allegations of Division I of the original Bill are admitted.

II

The allegations of Subdivision 1 and Subdivision 2 of Division II of the original bill are admitted. As to Subdivision 3 of the second Division of the original bill, this respondent says that the Constitution of the State of Mississippi provides that the Western boundary of that part of the State of Mississippi, between the 33rd and 31st degrees of North latitude, shall be the middle of the Mississippi River, or thread of the stream, and includes within the boundaries of the State of Mississippi all islands lying East of the thread of the Stream of said River, and also all lands which were at any time theretofore a part of the State. And the lands in controversy herein have been so claimed by the State of Mississippi since 1817, and so platted and surveyed in 1823, when the State of Mississippi was admitted into the Union as one of the United States of America.

III

The allegations of Division III of the original bill are admitted.

IV

It is denied that the lands on the Mississippi River in the State of Mississippi, opposite the lands in the State of Louisiana on Willow Point and adjacent thereto, gradually wore away by erosion caved into the Mississippi River and [fol. e-3] disappeared. It is denied that at the same time the shore of the Mississippi River on the Louisiana side at this point was gradually extended in an easterly direction,

and it is denied that such alleged extension of the shore was by accretions formed successively and imperceptibly to the soil of said shore, nor did such alleged accretions extend easterly to the distance of approximately five miles from the original Louisiana shore.

It is denied that the Louisiana shore of the Mississippi River was thus extended in an Eastern direction by alluvion formed by accretion, and so likewise is it denied that the thread of the channel of the Mississippi River was extended in an Easterly direction.

And so also is it denied that the boundary line between the State of Mississippi and the State of Louisiana was extended Easterly in like manner and in a like distance.

It is denied that the Mississippi River about 1912 and 1913, or at any other time, suddenly abandoned its old channel and formed a new channel by cutting same through the accretions attached to the Louisiana shore, as described in the original bill. It is denied that said alleged change of channel was made rapidly and violently by an avulsion which cut off some five or six thousand acres of land and left most of it eastward of the alleged new channel claimed to have been thus made by the Mississippi River.

It is denied that at the time of said alleged avulsion the boundary line between the said States of Louisiana and Mississippi was in and remained in the center of the alleged old channel.

[fol. e-4] It is denied that the alleged old channel of the Mississippi River claimed by the complainant to be East of the channel alleged to have formed by avulsion gradually filled with silt until the water ceased to flow through said old channel.

It is denied that the present boundary line between the State of Louisiana and the State of Mississippi did at the time alleged, or at any other time, become fixed in the middle of the alleged old navagable channel claimed by the Complainant to lie East of the present middle of the channel of the Mississippi River. And it is denied that the present boundary line of said States is as described in the last paragraph of Division IV of the original Bill.

V

1st. As to the map and survey marked "Exhibit A" to the original Bill, the defendant says that this map in no

way undertakes to delineate the Mississippi River, but is confined wholly to lands lying entirely West of said River.

2nd. As to the map and survey marked "Exhibit B" to the original Bill, the defendant says that this map in no way understakes to delineate the Mississippi River, but is confined wholly to lands lying entirely West of said River.

3rd. As to the map marked "Exhibit C" to the original bill of complaint, it will be observed that this map shows on the Mississippi side of the thread of the stream of the Mississippi River Island No. 98, called on other maps Tullos Island.

[fol. e-5] 4th. The map marked "Exhibit D" to the original Bill of complaint does not correctly show change by erosion and accretion; nor does it correctly show changes in the Mississippi River involving the territory in dispute.

5th. As to the map marked "Exhibit E" to the original Bill of complaint, the defendant says that the island shown thereon marked "Newman T. H." is Island No. 98 or Tullos Island, which was located within the limits of the State of Mississippi at and prior to 1817.

6th. It is denied that the red line marked by surveyor upon "Exhibit F" to the original Bill, shows the boundary line between the States of Louisiana and Mississippi. And it is denied that said map itself shows that such is the boundary line or thalweg of the alleged old channel of the Mississippi River. And it is denied that the red dotted line superposed the said map correctly delineates the approximate shore line of the Mississippi River in 1913 and 1915, as alleged in Subdivision 6 of Divison 5 of the original Bill.

7th. The map marked "Exhibit G" to the original Bill of complaint is made up from a map of Township 19, Range 13, 14 East of Louisiana, and Township 9, Range 8 West in Mississippi. But it is denied that the two maps are connected in the proper relative position one to the other, but it will be observed that this map of the Complainant shows that Tullos Island or Island No. 98 was a part of the State of Mississippi in 1823.

8th. It is denied that the map marked "Exhibit H" to the original Bill of Complaint shows correctly the river banks in 1882.

[fol. e-6] 9th. It is denied that the map marked "Exhibit I" to the original Bill of Complaint shows correctly the River banks in 1894.

10th. It is denied that the map marked "Exhibit J" to the original Bill of Complaint shows correctly the river banks in 1913 in the territory in dispute, and it is denied that an avulson occurred in 1912 and 1913 as shown on said map and marked cutoff.

VI

It is admitted that the State of Mississippi claims that the present boundary line between it and the State of Louisiana is approximately the same as it was in 1823, as shown by maps marked "Exhibit A" and "Exhibit B" to the original Bill, and it is true that all of the lands east of said line shown on said maps are claimed as Mississippi territory. But it is denied that such claim is without foundation in fact or law. The facts are that the territory in dispute has been territory of the State of Mississippi from its organization as a State in 1817 to the present time, the said land being surveyed by surveyors of the United States of America in the year 1823, platted as a part of the State of Mississippi and sold by the United States of America as lying within the State of Mississippi. At all times since 1817 said lands have been claimed by the State of Mississippi; have been assessed with taxes by the State of Mississippi; and the owners thereof have at all times recognized the sovereignty of the State of Mississippi thereto. And the said land has never been assessed for taxes in the State of Louisiana, nor until a short time before the bringing of this suit did the State of Louisiana make [fol. e-7] any claim to said land at any time as this defendant is informed and believes.

It is admitted that the State of Mississippi has sold land East of the boundary line as it existed in 1823 and West of the line claimed by the Complainant to be the channel of the Mississippi River as it existed at the time of the alleged avulsion of 1912 and 1913 and patents have issued for said land as alleged in the original Bill.

It is admitted that the Tax Collector of Issaquena County, Mississippi, sold to the State of Mississippi for delinquent

taxes the lands described in Exhibit L to the original Bill of Complaint.

It is denied that all or any of said land is Louisiana territory and it is denied that the action of the State of Mississippi and its officials in selling said land and issuing patents therefor, is illegal, null and void, nor is such action an attempt to appropriate territory belonging to the State of Louisiana.

VII

It is denied that the sovereignty of the State of Louisiana has been infringed by the State of Mississippi, but since the State of Louisiana, by this suit, has claimed the said land, it is true that it is now necessary that the boundary between said states at this point be determined. But it is denied that such boundary line should be fixed and determined as prayed for in the original Bill of Complaint and as indicated on Exhibit E thereto.

On the contrary the said boundary line should be located [fol. e-8] and fixed in accordance with the boundary line as it existed in 1823 as shown by Complainant's Exhibit A to his original Bill, as the center of the thread of the Mississippi River, as it existed then and 1817, is the true boundary line between the State of Mississippi and the State of Louisiana at the points in dispute herein.

Wherefore, this defendant prays that if a boundary commission be appointed by this Court to ascertain and designate the boundary line between the State of Louisiana and the State of Mississippi, upon the coming in of the report of said commission there be a decree of this Honorable Court fixing and determining the boundary line between said States, as the center or thread of the Mississippi River as it existed in 1823 as shown by the survey of the United States government published in 1823 which is filed as "Exhibit G."

Now having fully answered the original Bill of Complaint, the State of Mississippi submits this controversy to this Honorable Court for determination and decree.

The State of Mississippi, by Rush H. Knox, Attorney General. H. H. Creekmore, Pat Henry, E. C. Sharp, of Mississippi, Solicitors for the State.

[fols. f & g] IN THE SUPREME COURT OF THE UNITED STATES

MOTION FOR LEAVE TO FILE COMPLAINANT'S MOTION FOR COMMISSION TO TAKE TESTIMONY—Filed December 22, 1925

Now comes the complainant, by counsel, and moves the Court for leave to file the attached motion for commission to take testimony.

Percy Saint, Attorney General of Louisiana; John Dale, Robert Ash, of Counsel for the State of Louisiana.

[fol. h] IN THE SUPREME COURT OF THE UNITED STATES

MOTION FOR COMMISSION TO TAKE TESTIMONY—Filed December 22, 1925

Now comes the complainant, by counsel, and moves the Court to issue a commission for the taking of proofs in the above-entitled cause.

The complainant further moves the Court to make the following conditions a part of the said commission:

1. Proofs shall be taken by a commissioner or commissioners to be named and designated in writing by agreement of both parties.

2. Each commissioner named and designated as provided herein before assuming his duties shall take and subscribe [fol. h-1] an oath that he will faithfully and impartially discharge and perform all duties devolving on him as such commissioner according to the best of his ability and understanding. Such oath shall be filed with the clerk of this Court together with the writing naming and designating such commissioner.

3. Such commissioner or commissioners shall, with all convenient speed, proceed to take all proofs which may be offered by either party at such times and places as may be agreed upon by said parties, or as may be designated by either of said parties upon ten days' notice in writing to the opposing party.

4. Such commissioner or commissioners shall have authority to administer oaths, to subpœna witnesses, to certify

proofs and to perform all acts necessary to carry the order of the Court into full effect.

5. Each commissioner before whom proofs are taken shall employ a competent stenographer, at the expense of the State which is offering the proofs, who shall make a complete record of all proofs taken or offered and of all proceedings in connection therewith. The stenographer shall furnish the commissioner with three typewritten copies, one copy of which shall be delivered to counsel for each of the States of Louisiana and Mississippi. The other copy, after verification and correction by him, shall be filed by the commissioner with the clerk of this Court as evidence in the case.

6. Any matter appearing in the published statutes of Louisiana, Mississippi, or of the United States, or in any congressional documents, or in any other published record of Louisiana, Mississippi, or the United States pertaining to [fol. h-2] the issues herein shall be received as evidence without further or other authentication than the publication thereof, subject, however, to objections on grounds other than authentication.

7. The compensation of each commissioner shall be — dollars per day for each day devoted to the case and all necessary expenses.

8. Each State shall pay the expense of taking proofs in its behalf and of all witnesses summoned in behalf of each State respectively. Provided, that upon final judgment of this Court the costs shall be taxed as the Court may direct. Witnesses shall be entitled to compensation at the same rate as witnesses in the United States District Courts.

Percy Saint, Attorney General of Louisiana. John Dale, Robert Ash, of Counsel for the State of Louisiana. Richard F. Reed, Gerard Brandon, Gerard H. Brandon, Philip Hough, B. F. Young, John Dale, Jr., L. D. Dale, Solicitors for the State of Louisiana.

[fol. i] IN THE SUPREME COURT OF THE UNITED STATES

STIPULATIONS AS TO APPOINTMENT OF COMMISSIONER—Filed December 22, 1925

The plaintiff, State of Louisiana, and the defendant, State of Mississippi, hereby agree that the Supreme Court of the United States may appoint Hon. Jack Thompson, clerk of the United States District Court for the Southern District of Mississippi, Jackson, Mississippi, commissioner to take testimony in the above numbered and styled suit, and that the Court give him all the powers necessary and proper for the efficient execution of said appointment.

[fol. i-1] Signed in duplicate October, 1925.

(Signed) Percy Saint, Attorney General of Louisiana. John Dale, Gerard Brandon, Rich'd F. Reed, G. H. Brandon, Rush H. Knox, Attorney General of Mississippi. E. C. Sharp, H. H. Creekmore, Pat Henry.

[fol. j] SUPREME COURT OF THE UNITED STATES

ORDER APPOINTING JACK THOMPSON COMMISSIONER—Filed January 11, 1925

On consideration of the motion of Robert Ash, Esquire, of counsel for the complainant, and of the stipulation of counsel for the respective parties designating Jack Thompson, Esquire, Clerk of the United States District Court for the Southern District of Mississippi, Jackson, Mississippi, as the Commissioner to take testimony and proofs and to certify the same to this Court.

It is now here ordered by this Court that the said motion and stipulation be, and the same are hereby, approved; and that the said Jack Thompson, Esquire, be, and he is hereby, appointed a Commissioner of this Court to take testimony and proofs offered by the parties in accordance with the terms of the motion and stipulation filed herein on December 22, 1925.

It is further ordered that the said Commissioner, before assuming his duties, shall take and subscribe an oath that

he will faithfully and impartially discharge and perform all the duties devolving upon him as such Commissioner according to the best of his abilities and understanding. Such oath to be filed with the Clerk of this Court.

It is further ordered that the said Commissioner shall receive compensation at the rate of Ten dollars ($10.00) per diem while engaged in executing this commission.

[fol. k] IN SUPREME COURT OF THE UNITED STATES

OATH OF JACK THOMPSON, COMMISSIONER—Filed February 3, 1926

STATE OF MISSISSIPPI,
County of Hinds, ss:

Oath

I, Jack Thompson, having been appointed Commissioner to take testimony and proofs and to certify the same to the Court in the above entitled cause, do solemnly swear that I will faithfully and impartially discharge and perform all the duties devolving upon me as such Commissioner according to the best of my abilities and understanding.

(Signed) Jack Thompson.

Subscribed and sworn to before me this 30 day Jan'y, 1926. (Signed) R. B. Ricketts, U. S. Comm'r, So. Dist. of Miss. (Seal.)

[fol. l] SUPREME COURT OF THE UNITED STATES

MOTION FOR LEAVE TO OPEN, FILE, AND PUBLISH TESTIMONY—Filed November 18, 1927

Comes now the complainant in the above-entitled cause, by its special counsel, and suggests to the Court that Honorable Jack Thompson, special commissioner, has completed the taking of testimony in the case and has lodged the entire record with the clerk.

The complainant therefore moves the court for leave to open, file and publish the testimony which has been certified by the commissioner and has been sent by the said commissioner to the Clerk of this Court.

Robert Ash, Munsey Building, Washington, D. C.,
Special Counsel for Complainant.

[fol. m] SUPREME COURT OF THE UNITED STATES

ORDER GRANTING LEAVE TO OPEN, FILE, AND PUBLISH TESTIMONY—Filed November 28, 1927

On Motion to Open, File, and Publish Testimony

On consideration of the motion of Mr. Robert Ash, of counsel for the complainant, to open, file, and publish testimony in this cause, It is now here ordered that the said motion be, and the same is, hereby granted.

[fols. n & 1] IN THE SUPREME COURT OF THE UNITED STATES

No. 22, Original

STATE OF LOUISIANA, Complainant,

vs.

STATE OF MISSISSIPPI, Defendant

Appearances:

For the complainant: Hon. Percy Saint, Attorney General State of Louisiana, Hon. John Dale, Hon Gerard Brandon, Hon. Gerard H. Brandon, Hon. Philip Hough, Hon. John Dale, Jr., and Hon. L. D. Dale.

For the defendant: Hon. Rush H. Knox, Attorney General State of Mississippi; Hon. E. C. Sharp, Hon. George Butler, Hon. H. H. Creekmore, Hon. Pat Henry, and Hon. P. C. Canizaro.

Transcript of Evidence

Caption

Be it remembered that the following testimony, oral, record and documentary, was taken at the Federal Court room in the City of Jackson, Mississippi, on this, the 4th day of October, 1926, before Hon. Jack Thompson, Commis- [fol. 2] sioner, appointed by the Supreme Court of the United States in the above entitled cause, the parties having agreed to the taking of such testimony at said time and place.

Offers in Evidence

By Mr. John Dale: The complainant offers the following maps:

1. A duly authenticated copy of Exhibit A attached to the original bill of complaint.

2. A certified copy of Exhibit B attached to the original bill of complaint.

2½. A certified copy or duly authenticated map marked Exhibit BB.

By Mr. Henry: The defendant objects to the Exhibit BB offered in evidence by the complainant for the reasons that the map does not show to whom the property, if any there be, or if any there was, belongs, and that it is a mere sketch of something which is called Hopkins Island, which is not connected with either Mississippi or Louisiana.

The defendant further objects for the reason that this is a map issued by the Surveyor General of the State of Louisiana, and that the State of Mississippi is not bound by it. The defendant further says that the certificate is from the Department of the Interior, General Land office, [fol. 3] Washington, D. C., which merely shows that the map is on file there.

By the Commissioner: Let the objection of counsel for defendant be noted in the record, to be considered at a later date, along with all other objections.

By Mr. Dale: Resuming where we left off, the complainant offers:

3. A certified copy of Exhibit C to the original bill of complaint, being Sheet 17 of the Mississippi River Commission Survey.

4. A certified copy of the map marked Exhibit D to the original bill of complaint, and being Sheet 17 of the Mississippi River Commission Survey.

5. A certified copy of map attached to the original bill of complaint, marked Exhibit E, shown on Sheet No. 17 of the Mississippi River Commission Survey.

6. A map shown on the original bill of complaint marked Exhibit F, and shown on Chart 47 of the Survey of the Mississippi River Commission.

7. A certified copy of Chart No. 45, made by the Mississippi River Commission 1879, 1880 and 1882, marked Complainant's Exhibit EE.

8. A certified copy of Chart No. 46 made by the Mississippi River Commission 1879-1880 and 1882, marked Exhibit EEE.

[fol. 4] Capt. GEORGE PRINCE, being first duly sworn as a witness on behalf of the complainant, testified as follows:

Direct examination.

By Mr. Gerard Brandon:

Q. This is Capt. George Prince, is it?
A. Yes, sir.
Q. Have you been sworn, Captain?
A. Yes, sir.
Q. I will ask you to please state your age and your occupation?
A. I am fifty-six years old and am a steamboat captain and pilot.
Q. In what business are you now engaged?
A. In the steamboat business.
Q. How long have you been engaged in that business?
A. For more than thirty years.

Q. In what waters, Capt. Prince?

A. On the Ohio and Mississippi rivers.

Q. On the Ohio and Mississippi. On what portion of the Mississippi River?

A. From Memphis to New Orleans.

Q. In what capacity have you been engaged in that business?

A. As captain and pilot.

Q. Are you a licensed pilot?

[fol. 5] A. Yes, sir.

Q. For what length of time have you held a license as pilot on the Mississippi River, Captain?

A. For thirty years.

Q. Do you still hold a license as pilot?

A. Yes, sir.

Q. You said, as I understood you, that you were also licensed as captain and master?

A. Yes, sir.

Q. Are you still running a boat, or not, on the Mississippi river?

A. Yes, sir.

Q. Then you still hold a master's license?

A. Yes, sir.

Q. And you say you are still running a boat on the Mississippi river in that capacity?

A. Yes, sir.

Q. Captain, I will show you a map which has been offered in evidence as Exhibit C to the complaint in this case, and I direct your attention to a point on the said map on the Louisiana shore marked "Willow Point." I will ask you whether or not you are acquainted with that section of the Mississippi river?

A. I am.

Q. When did you first become acquainted with that sec-

[fol. 6] tion of the river?

A. About 1897.

Q. In about the year 1897?

A. Yes, sir.

Q. Under what circumstances, Captain?

A. I operated a tow boat up and down that way, up and down the river.

Q. How high up?

A. Did we operate the boat?

Q. Yes, sir; about those points?
A. To New Orleans below and——
Q. (Interposing.) How far above?
A. About 100 miles above.
Q. And you say to New Orleans below?
A. Yes, sir.
Q. You say that it was in 1897 that you became acquainted with the conditions there?
A. Yes, sir.
Q. During 1897 how many times did you have occasion to pass that point?
A. I would say anywhere from six to ten times a year.
Q. During the year?
A. Yes, sir.
Q. At that time in what capacity were you on the boat that passed up and down the river?
[fol. 7] A. As captain and pilot.
Q. Since the year 1897 have you had occasion or not to pass up and down that section of the river?
A. Yes, sir.
Q. How often a year?
A. Well, from six to ten times.
Q. Every year or only parts of years?
A. I think that is a good average for the entire time except from 1914 until 1920, I used to run up there regular.
Q. Regularly from 1914 to 1920?
A. Yes, sir.
Q. Every year?
A. Yes, sir.
Q. I understood you to say that you first became acquainted with and familiar with the Mississippi River in the section of Willow Point in 1897, and that on an average you had gone up and down the river in front of that point from six to ten times a year, and that between 1914 and 1920 you made trips regularly?
A. Yes, sir.
Q. During this time did you become acquainted, or not, with conditions along the main shore?
A. Yes, sir.
Q. When you first became acquainted with this section of the river in 1897, what was the condition of the short line [fol. 8] on the Louisiana side of the river at what is known and indicated on the Exhibit as Willow Point?

A. That was a sand bar.

Q. You say that was a sand bar there?

A. Yes, sir.

Q. Was it of a great or small extent at the time that you first noticed it?

A. Well, it was a dry sand bar for a good ways out in the river, and then back two or three hundred yards you could see a growth of willows or cottonwood.

By Mr. Henry: That is very indefinite. Can't you give it to us more accurate than that.

By Mr. Brandon: I will try and fix it. Let me ask this question:

Q. With which shore was that connected, or was it connected with either shore at the time?

A. It was connected with the Louisiana shore.

Q. About wh-t distance did this bar extend out from the Louisiana shore with which it was connected in 1897?

A. It was about three or four miles long when the river got down low.

Q. When the river got down low?

A. Yes, sir.

Q. In the ordinary stage of the water, or high water, [fol. 9] what would be its condition then, when the water was ordinary and when the water was high?

A. What do you mean by ordinary water and what do you mean by high?

Q. I am not sufficiently posted on river matters to say. You are a steamboatman and I will have to ask you. In low water you say it extended out about three or four miles. In high water what would be the condition?

By Mr. Henry: He said that it extended down. He didn't say it extended out.

By Mr. Brandon:

Q. Well, I will ask him whether I was right, whether it was on east towards Mississippi?

A. Yes, sir; it extended towards the Mississippi shore.

Q. Three or four miles?

A. Yes, sir.

Q. In very low water?

A. Yes, sir.

Q. In high water what was the condition of that bar?

A. The bar was still there but covered by water.

Q. As to extent state whether or not that bar remained stationary or not?

A. The bar kept building each year.

Q. It was building each year?

A. Yes, sir.

[fol. 10] Q. In which direction was it building with reference to the shore line? Towards the Mississippi shore or towards the Louisiana shore?

A. It was building towards the Mississippi shore line.

Q. Out from the Louisiana shore?

A. Yes, sir.

Q. Did it remain still connected with the Louisiana shore?

A. Yes, sir.

Q. At this time back as far as 1897, you have stated that you passed up and down the rover as master and pilot of a steamboat on which you were a number of times a year. At that time on which side of the river was the main channel or current?

A. It was along the Mississippi shore.

Q. And going up and down the river in your steamboat did you have occasion to land on either side—on both shores, Captain Prince?

A. Yes, sir.

Q. On both shores?

A. Yes, sir. On both sides.

Q. In 1897 state if you know whether there were in existence any islands between the main shore and the sand bar that you have testified was making out from Willow [fol. 11] Point on the Louisiana shore?

A. No, sir; there was no island.

Q. There was no island?

A. No, sir.

Q. If there had been an island in that river would you or not have known it?

A. Yes, sir.

Q. You would have known that?

A. Yes, sir.

Q. And you state that there was no island?

A. No, sir; there has never been an island since I have been there.

Q. And that acquaintance extends back to 1897?

A. Yes, sir.

Q. It was a clear river between Willow Point and the Mississippi shore so far as islands were concerned?

A. Yes, sir.

Q. Do you know where Albemarle Bend is?

A. Yes, sir.

Q. Where is Albemarle Bend?

A. It begins about thirty-six miles above Vicksburg and extends about ten miles around the bend. They always called it ten miles.

Q. Was it or not in that part of the river between the [fol. 12] Mississippi shore and Willow Point?

A. Yes, sir.

Q. Is that Albemarle Bend?

A. Yes, sir.

Q. And I understand you that was a clear river so — as islands were concerned at that time?

A. Yes, sir.

Q. You have stated that from 1897 the sand bar remained out from the Louisiana shore continuously and continued to grow. In what direction did it grow?

A. It followed the course of the river, building across the main shore.

Q. On which shore did it remain connected?

A. The Louisiana shore.

Q. As that bar extended out, you stated at first, when you first knew it, the end of it or the point of it was a naked sand bar. Did any change take place, or not, with reference to the character of that bar as it grew?

A. Yes, sir; willows came on it, cottonwood and timber.

Q. On what part of the bar did they begin to come on principally?

A. Back from the water I would say, about 300 yards.

Q. With reference to the point where was this? Towards the end of the bar?

A. Yes, sir.

[fol. 13] Q. As these willows grew what changes took place with reference to the bar where the cottonwood and willows sprung up with reference to alluvium deposit?

A. Trees grew there, and where trees grew the land built up higher, higher than the main land.

Q. What was it called, this change that took place?

A. What was what?

Q. What was the point called where it got higher there at the end. What was the end of this point called?

A. They called it Newman's tow-head.

Q. What is a tow head, Captain?

A. It is a kind of a middle ground in the river. A small island that trees and bushes grown on.

Q. When you first knew Newman's towhead what was the character of timber that sprang up on that Newman's tow-head, Captain?

A. Willow and cottonwood.

Q. Willow and cottonwood?

A. Yes, sir.

Q. Where was the river at this time with reference to the end of that towhead?

A. It was towards the Mississippi side.

Q. Between the towhead and the Mississippi shore?

A. It was for awhile until 1912.

Q. In 1912? What took place in 1912?

[fol. 14] A. In 1912 the river broke through right there at that towhead and sand bar.

Q. What was the result of this breaking through there, Capt. Prince?

A. Well, the channel of the river went through.

Q. Do you know of this breaking through of your own personal knowledge? Did you see the changed conditions?

A. Yes, sir.

Q. Tell the Court how you happened to know about it?

A. Well, I was going up the river and I saw the break in the timber through the willows.

Q. When was that?

A. That was in 1912.

Q. What part of the year? What part of 1912?

A. It was during high water. I don't remember the month, but it was in the spring of the year.

Q. And you saw the break in the timber?

A. Yes, sir.

Q. On that trip up the river in the spring of 1912 when you noticed the river breaking through, did you go through the break on that occasion or not?

A. No, sir.

Q. Where did you go?

A. We went around the main channel of the river.

Q. Between the end of the tow head, the Newman Tow-head and the Mississippi shore?

[fol. 15] A. Down Albemarle Bend.

Q. In 1912 when the river broke through there was there any island or land between the end of the Newman Tow head and the main Mississippi shore?

A. No, sir.

Q. It was an unobstructed river as far as any island was concerned?

A. The unobstructed river; yes, sir.

Q. And up the river back through there in highwater, the high water of 1912, did any changes take place in the channel of the river, or the course of the river?

A. Yes, sir; the river bank fell off from Tennessee Point on the Mississippi side.

Q. Down?

A. Down towards there and across the old channel of the river.

Q. Did the channel remain open, or if so, for how long? What took place with reference to the channel of the river?—the channel?

A. The old channel remained open until about 1916. We could go through there.

Q. In all stages of the water?

A. Yes, sir. No—in 1916 we could not go through the old channel.

Q. In 1916 you could not go through?

A. No, sir; not in low water.

[fol. 16] Q. Now then, at which end did it begin to fill up?

A. That was on the upper end.

Q. At the upper end?

A. Yes, sir.

Q. And by 1916 it was so filled up they could not go through there at any stage of water with a boat?

A. Yes, sir; you could go through there until there was about twelve feet on the guage. Then you had to quit if the bar was out.

Q. You have stated that when you first knew the sand bar that made out from Willow Point to Newman's Tow Head that it had a small growth of cottonwood and willow timber on it, and that this caught the alluvium, making the tow head. When you first noticed it what was the size of the timber at the end of this point?

A. Only small trees there right under the point. I have tied up there several times to trees from eight to ten inches in diameter.

Q. That was the size of the largest trees?

A. Yes, sir.

Q. In what year was that? About what year?

A. It was about 1900.

Q. In about 1900 large trees were on Newman's Tow Head, about ten inches in diameter?

A. From eight to ten inches.

[fol. 17] Q. What was the character of those trees as to variety, Captain?

A. Mostly cottonwood.

Q. Any willow?

A. And some willow; yes, sir.

Q. Mostly cottonwood and some willow?

A. Yes, sir.

Q. State whether or not Albemarle Bend at the end of Newman's Tow Head, has, since that cut off, filled up entirely, the upper end of it?

A. Yes, sir; the upper end filled up entirely.

Q. Can you go through there at any stage of the water with a boat now?

A. No, sir.

Q. How long has it been since you could go through there?

A. In 1920 was the last time, and it was very hard to get through then.

Q. As late as 1920 you were able to go with a steamboat between the end of Newman's Tow Head and the main shore, were you?

A. Yes, sir.

Q. You made that trip yourself?

A. Yes, sir.

Q. Now, you have stated that you went up Albemarle Bend in very high water as late as 1920. On which side of [fol. 18] the shore, the Louisiana or the Mississippi side, was the current at that time?

A. The current of the river was down behind Newman's Tow Head, between Newman's Tow Head and Willow Point.

Q. That was the main current?

A. Yes, sir.

Q. Now, I mean with reference to Albemarle Bend, when you went up there, when the water was flowing through Albemarle Bend, which way did the current make through there?

A. It went down right next to the Newman Tow Head.

Q. Between Newman's Tow Head and the Mississippi shore?

A. Yes, sir; the Mississippi shore.

Q. Now, Capt. Prince, you have already testified substantially to this effect, that the bar grew gradually and steadily out from the Louisiana shore, or Willow Point, towards the Mississippi shore, up until 1912, out from the Louisiana shore. What change, if any, was taking place at that time on the Mississippi shore?

A. The Mississippi banks were caving.

Q. Much or little?

A. Caving very rapidly.

Q. Do you know whether there was any revetment being done by the Levee Board on the Mississippi shore of Albemarle Bend?

A. Yes, sir; the Government revetted, I think, in 1910.

[fol. 19] Q. At the upper or lower end of Albemarle Bend?

A. They were working down about the middle of it.

Q. How long did that work continue?

A. I think it was for some two years if I remember right. I think they were there two years.

Q. Do you know, during the period of your knowledge there, how far back the Mississippi shore caved, or can you estimate it?

A. No; only from the sand bar on the other side.

Q. Was it a short distance or a long distanve?

A. Quite a long distance.

Q. Now, you say then as the Mississippi shore caved back the Louisiana shore made out?

A. Yes, sir.

Q. And you have stated also that it made out each year from the Louisiana shore to the Mississippi shore?

A. Yes, sir.

Q. Now, I would ask you the best of your knowledge how far from the Louisiana main land had this sand bar been extended out towards the Mississippi shore in 1912, before the cut off you have spoken of—how many miles about?

A. I can't tell how far back it went, but along the river it was about five or six miles from Willow Point to the end of the point of the bar.

Q. Now, in 1912, you say the river made a cut off between the tow head and the Louisiana shore?

[fol. 20] A. Yes, sir.

Q. Now then, after that cut off occurred, where did the main channel of the rover run as related to Newman's Tow Head and the Louisiana shore,—after the cut off?

A. Well, they went out down through the middle of the bar.

Q. Between the Louisiana shore and the Newman Tow Head?

A. Yes, sir.

Q. Then do I understand you it made at first, after the cut off, an island at Newman's Tow Head?

A. Yes, sir.

By Mr. Henry: I don't think he said that. Let's get it right.

By Mr. Brandon:

Q. All right. State whether or not Newman's Tow Head became an island after the cut off?

A. Yes, sir.

Q. Since the cut off state whether or not, if you know, whether Newman's Island has continued to grow?

A. Yes, sir.

Q. In which direction has the growth of Newman's Tow Head been?

A. The old bed of the river filled up until almost entirely closed down to the upper end, entirely closed, and the lower [fol. 21] end just a small piece. A small gap.

Q. That is all I care to ask Capt. Prince.

By Mr. Dale:

Q. Do you know why a tow head gets higher on the side furthest out towards the river?

A. Yes, sir.

Q. Why?

A. Well, the sand bar will pick up the sand from the direction that the wind is blowing. It will pick up the sand as it blows against the timber, and that part of the land is built higher at the timber than any place else.

By the Commissioner:

Q. What is a tow head?

A. It is a high place on a sand bar where the willows and the trees begin to grow. It is generally connected with the land or the main shore.

By Mr. Dale:

Q. As I understand from your testimony, the sand is caught by the trees in the same manner that the snow would drift up?

A. Yes, sir.

Q. Piles up high against them?

A. Yes, sir.

Q. And that, in your opinion, makes the tow head fill up next to the trees?

A. Yes, sir; that's what makes that point grow higher [fol. 22] than any other point on the bar.

Q. Do you know what size the timber is now on the Newman Tow Head?

A. No, sir; but there are some big trees there.

Q. You have never had occasion to observe it carefully?

A. It is all timber, I jusge in the neighborhood of twenty-four to twenty-six inches.

Q. What class of timber is on it, Captain?

A. Cottonwood and willow.

Q. That is all we care to ask. You may cross-examine the witness.

Cross examination.

By Mr. Butler:

Q. Captain Prince, I show you a map that has been marked Exhibit G to the bill of complaint filed in this case, on which the section and section lines are shown, and the sections are numbered, showing the river bed in 1883, and showing Tullos Island, or Island No. 98, and I will ask you how far east of a point anywhere opposite Tullos Island or Island No. 98, this point had extended in 1897 when you first saw it?

A. I never remember seeing Island No. 98.

Q. You say you first became familiar with the point in 1897?

A. Yes, sir.

Q. How far east in point of extent, by reference to some [fol. 23] section number or some mark on the map in 1897?

A. There was not any island there.

Q. I did not ask you about that.

A. I don't know anything about your sections. I can't tell you anything about that. All I know is the river.

Q. You don't know how far it had extended east from the original line of 1823?

A. No, sir.

Q. I call your attention to Map Exhibit J to the bill of complaint showing the cut off of 1912 and 1913. Do I understand from your testimony that this point, Willow Point, prior to 1912 and 1913, the eastern end of which is shown here as Newman's Tow Head, had extended out approximately this distance prior to the cut off of 1912-13?

A. Willow Point extended out in this direction, northeasterly, a distance of five miles before the cut off.

Q. At what time had the river extended as far east as the section marked 28 on the map J?

A. I don't know anything about the section. I can't tell you.

A. Well, that is the first point. It shows every extent, 28, 27, 22, 15 and 9. That shows the shore line circles around through there. At what time did it reach those points?

A. This was made out here up till 1912.

[fol. 24] Q. In other words, you say it shows——

A. (Interposing.) Willow Point was on the foot of Salem Bend.

Q. Was Willow Point at the foot of Salem Bend in 1912? The Mississippi River reached out as far as shown on the Map Exhibit J, is that right?

A. As near as I can tell you.

Q. Now, look at that Chart Exhibit D to the bill of complaint. When did the channel there east of No. 98 close, if you know?

A. There was no island there,—not in my time.

Q. But I am asking you when it closed, if you know?

A. There has not been any island there since 1897.

Q. This map purports to be a survey of 1892, 1894, 1899 and 1900, and 1907, and I want to ask you when, if at all, this channel shown to the east and north of Island No. 98 closed, if you know?

A. There was no Island 98 there in my time.

Q. Did you ever know of any such land being designated as Island No. 98?

A. No, sir.

Q. You never had any knowledge of it at all?

A. No, sir.

Q. Have you ever seen and observed to ascertain whether or not there is any cottonwood timber now growing on the southern part of Island No. 98, shown on Exhibit D to the [fols. 25 & 26] bill of complaint of the size of thirty inches or more in diameter, the same being along in Sections 18 and 21 as shown on the map, Exhibit H?

A. Where is that section?

Q. Here is 28 and here is 21, and this is Exhibit H I am referring to. Here is the island I refer to. Now, this island is shown on Exhibit D as Island No. 98. I want to ask you if you have ever seen or observed since 1897, or recently, cottonwood timber growing on there in diameter of 30, 32 or 33 inches?

A. I don't know where the island is.

Q. I want to ask you if you have been along there on the line of Section 28, Section 22, shown on the Map Exhibit D, and will ask you if it is not a fact that that old channel or chute shown on Exhibit D is still clearly delineated with a very few trees growing on it right today, or do you know whether that is true or not?

A. I don't know where that is. I will have to find where it is. If I knew I would answer you.

Q. Now I show you Exhibit D, which shows Island No. 98, and also Chotard Landing.

A. There is no island there.

Q. Wait a minute. I am not through. See if you can locate it by section numbers and see what we are talking about here. Of course, I understand that you are not a land man. I show you also Exhibit G, showing that Tullos [fol. 27] Island, or Island No. 98 is composed of a part of Section 20, a part of fractional Section 21, a part of fractional section 28, a parge part of fractional section 29 and a little bit of fractional section 30. Now, I want to ask you if you have seen or observed at any time since 1897 and on up till now, cottonwood growing down here on sections 21 and 28 of about 28 or 30 inches or more in diameter?

By Mr. Dale: We object to the question asked for the reason that it is calculated to mislead the witness.

By Mr. Dale:

Q. That map, Exhibit D showing the surveys of 1882 and 1894, shows that Tullos Island existed in 1882, with timber on it, but prior to the time that this witness ever visited that part of the Mississippi river the map also shows the survey of the Mississippi River Commission in 1894, in which Tullos Island had entirely disappeared, and there was no such Island there after 1894, or after the witness became acquainted with that section of the river.

A. I know nothing about sections.

Q. Now, will you refer to some exhibit, preferably Exhibit D and show me how far Willow Point or Newman's Tow Head extended out into the river when you first became familiar with it in 1907?

A. It extended from Willow Point on out in the direction of——

[fol. 28] Q. (Interposing.) How far? Look, here is Willow Point here, Captain. We are looking at the eastern edge of Willow Point?

A. Yes, sir.

Q. How far from a perpendicular line east had this land extended when you first knew it, that is, from Willow Point?

A. Well, from Willow Point it came over to Albemarle Bend. It was about ten miles from Duvall's Landing and Belleview Point. After the river broke through it was about two and a half miles from Belleview Point to Willow Point. It is between nine and ten miles around the bend.

Q. My question is how far east of Willow Point or Pecan Grove Plantation had this land—call it that or what you please, extended east in 1897?

A. I don't know the points of the compass there. That all caved away. I can't tell you about how far.

Q. You don't know how far?

A. No, sir.

Q. Do you know how far it went at the first point farthest east the Mississippi River ever went from Willow Point?

A. No; I can't tell you the distance.

Q. It reached the maximum eastern point about 1917 didn't it?

[fol. 29] A. No, sir.

Q. Did you know a man up there by the name of Captain somebody, that committed suicide,—Maj. Higgins, in 1917 on account of——

A. (Interposing.) I didn't know him.

Q. Do you know where the Higgins plantation was?

A. No, sir.

Q. Or where his land was?

A. No, sir.

Q. Up till lately—last year—was there a large lake, the mouth of which is at the present landing known as Chotard Landing that extended along on up along with the river—where the river was in 1917, for a distance of a mile or so, that never filled up?

A. That right next to the river shore had not filled up.

A. A large lake?

A. Yes, sir; good size.

Q. And it extends on up for some distance north of Chotard Landing, up where they have those logs?

A. Yes, sir; for seven or eight miles.

Q. There are two or three lakes up at the north end of what was originally Tullos Island, are there not?

A. I don't know where Tullos Island is. It was not in the river at the time that I was there.

Q. When land accretes, makes there by accretion, it *it* [fol. 30] does not leave a lake intervening, does it?

A. Very often.

Q. How does it accrete in between them and leave a lake?

A. Well, sometimes the river makes a big cut off.

Q. You don't call that an accretion when it makes a cut off?

A. To be sure it does.

Q. Now, I want to ask you if you know anything about a place up there called St. Francis Chute?

A. In and around this neighborhood?

Q. Yes, sir; right east of Willow Point?

A. I never saw it.

Q. Did you ever hear of it?

A. I never heard of it at all by that name.

Q. Do you know whether or not there is timber growing down there in Section 30, or the southeast corner of the Island originally known as Tullos Island, which measures two feet from the ground, ten or fifteen feet in circumference?

A. I never saw Tullos Island and therefore I can't tell you anything about it.

Q. Do you know whether or not there is timber now growing and standing at the point shown on Exhibit B to the bill of complaint and indicated here as timber, marked Island No. 98, whether there is any island or not, whether [fol. 31] that timber is now growing and standing there that is from 28 to 30 inches in diameter,—cottonwood timber?

A. No, sir.

Q. Up north of Chotard Landing to the right of the Mississippi shore side?

A. All along the Mississippi shore from Chotard,—north of Chotard, and all the way around the bend there is timber growing.

Q. On the Mississippi side?

A. Yes, sir.

Q. And that is good, large cottonwood timber, and lots of it, is it?

A. There may be some cottonwood, but most of it is other timber.

Q. I want to ask you if you know where the old gentleman had a little camp up there on Island No. 98 for the last four or five years?

A. I don't know anything about Island No. 98.

Q. Well, at a point east of Willow Point, over across the river from Willow Point, where there was an old gentleman had his cabin and living there?

A. Well, there was some niggers lived all along there.

Q. Do you see and observe that along that point, along in Section 20 or 21, from the old river bed along in here, that there are some very large cottonwood trees now grow-
[fol. 32] ing on an elevation eight or ten or fifteen feet higher than the surrounding ground, on which the soil has been washed away from the roots like it does on the banks of Eagle Lake and other places? Other places that you have observed on the Mississippi river?

A. There is timber all around that bend.

Q. But have you noticed it growing up there on that elevation with the dirt all washed away from the roots? Have you noticed that?

A. No, sir.

Q. You have not noticed that?

A. No, sir.

Q. Coming back here to Section 30, you don't deny that there is an elevated bank at that point, do you?

A. At Chotard?

Q. Just above Chotard, a half a mile or a mile?

A. The bank along Chotard is filled there a little above. That is higher there than it is up in the middle of the bend.

Q. Coming back to Section 30, Captain Prince, which you say you do not identify at all as a section, but which is shown on Exhibit F, is there any timber growing—referring to Exhibit F—if there is not timber growing right across here on the southeast of what is known as Newman's Tow Head,—cottonwood timber, that will measure from three feet to three feet six inches in diameter?

[fol. 33] A. You say that is on the foot of Newman's Tow Head?

Q. Yes, sir; do you remember that?

A. I said that there is timber growing there.

Q. I know, but large timber, isn't it?

A. Well, away down on the foot here are *q*illows.

Q. I am not talking about away down on the foot.

A. I can't tell about the section.

Q. I point out a place on the map here marked with a cross mark,—marked with a circle on the map, right around in the vicinity west of Chotard plantation, the present vicinity of Chotard plantation, and will ask you if there are not some very large trees growing there right today?

A. There is some large timber there but I don't know the size of it.

Q. I will ask you if it is not a fact that Mr. Leonard cut merchantable timber off of that point down around the vicinity indicated by the mark there that I have called your attention to a number of years ago, mostly cottonwood?

A. Not to my knowledge.

Q. Not to your knowledge?

A. No.

Q. Do you know whether or not there is a point where the water now backs up in the old channel of 1823 in times of high water, where the old channel originally came in here?

A. Yes, sir.

Q. Water does back up in there, does it?

[fol. 34] A. Yes, sir.

Q. At times of high water?

A. Yes, sir.

Q. You spoke about observing a break across a point which was on the Newman tow head in 1912 or 1913, and you said that the reason why you observed it was because you noticed the timber line was broken?

A. Yes, sir.

Q. Now, was there timber on the right hand side of the break and also on the left hand side of the break in 1912?

A. Yes, sir.

Q. Large or small timber?

A. Small timber.

Q. How big was it then?

A. It looked like it might have been eight or ten inches.

Q. Did the break occur east or west of the point of Newman's tow head as you noticed it in 1897?

A. It went down the west side.

Q. How far the west side?

A. Right from under Willow Point to Chotard.

Q. That does not answer my question.

A. I don't know how to answer it then.

Q. You have designated a point where the break occurred in 1912, and that is shown pretty well on Exhibit F is it?

A. Yes, sir; here it is right here.

[fol. 35] Q. The point I am asking you about is if the point of the break is shown east or west of where the river was—the main channel of the river in 1887?

A. According to the map it would be west of it.

Q. How much west?

A. I can't tell exactly.

Q. Now, Captain, you have said here is where the river broke through in 1912?

A. Yes, sir.

Q. Now, that is where the river broke through at that time?

A. Yes, sir.

Q. I want to ask you where the point of land was in 1897 in reference to this Newman tow head?

A. This is the Newman tow head over here.

Q. Do you mean that the Newman Tow head had reached out here in 1897, five miles from Willow Point?

A. No; in 1912.

Q. I am asking you about 1897 when you first knew it?

A. No; it built out there—continued every year.

Q. Now, going back to the question on the point of Newman's tow head where it broke through in 1912. Where was the point on Newman's tow head with reference to where it broke through in 1912 when you first became familiar with the river, in 1897?

A. Well, it was all a sand bar from Willow Point all [fol. 36] the way around to Henderson's.

Q. How far is that from the break through?

A. Well, I can't get your question.

Q. Does this map correctly show the break of 1912?

A. It does.

Q. Where would that point of land be approximately in 1897?

A. Along about in here, right opposite Woodland Plantation,—Woodland Landing.

Q. In other words, Newman's tow head had gone away out here in 1913, is that right?

A. Let me see here. Let me understand this. Here is Oakland here. This is Woodland here. Oakland was about the middle of the river.

Q. The land moved as the river moved?

A. Yes, sir; moved back.

Q. Then you would say that was about four or five miles?

A. Just about that far.

Q. Did you ever know of the water running across here at the point on which I hold my finger—this place here?

A. A little bit on the ground, but I have never seen the water go through there. It never broke through.

Q. How high was the water when you observed this in 1912?

A. It was high water then.

[fol. 37] Q. It was out over the ordinary banks of the river?

A. Yes, sir; extremely high water.

By Mr. Henry:

Q. You said, Captain, that the tow head was the highest point on the sand bar?

A. No, sir; I did not say that.

Q. You did not say that?

A. I said that a tow head was a high point on a sand bar where willows and trees had begun to collect, and also alongside of the island.

Q. Also what?

A. Also along side of an island.

Q. Then you don't say that a tow head is the highest point on a sand bar?

A. No, sir; I don't say that.

Q. You say you don't say it?

A. No, sir.

Q. Now, this sand bar projects out in the river, and is made by accretions, is it, and the point where it strikes the river is its lowest point, is it?

A. Yes, sir.

Q. Now, a tow head, if one has been formed, is higher than the point where it reaches the river? Is that true?

A. It takes a tow head——

[fol. 38] Q. (Interposing.) Just let me have an answer to my question, Captain. A sand bar gains and grows out in the river, and where it meets the river it is of necessity its

lowest point? That is the lowest point on the sand bar, is it not?

A. Yes, sir.

Q. Now, the tow head which has been formed is higher than the point at which the sand bar reaches at the river is it?

A. I can't answer your question, Judge.

Q. Why can't you?

A. Because a tow head is usually the highest point on a sand bar.

Q. That is what I said and that is what you said. Now a tow head is the highest point on a sand bar in the river is it?

A. Yes, sir.

Q. That is what I asked you. Now then, you say that tow head formed in front of Willow Point?

A. No.

Q. Well, about that? Around the bend there at Willow Point?

A. The tow head it was formed when the river came up and surrounded in high water time.

Q. Captain Prince, I understood you to say a tow head was formed on a sand bar that came out from Willow [fol. 39] Point? Is that true?

A. Newman's tow head. That is the name.

Q. Newman's tow head?

A. Yes, sir.

Q. That is it?

A. Yes, sir.

Q. That is a tow head is it?

A. Yes, sir.

Q. How far did that tow head form from the bank of the Louisiana shore?

A. Well, it commenced right up the Louisiana shore and run down the river about four or five miles.

Q. You say that it started right at the Louisiana shore?

A. Yes, sir; that is, the sand bar.

Q. I am talking about the tow head.

A. I am talking about the tow head. The tow head was made up when the water came up.

Q. I don't care when it made. How far was that tow head when it first formed from the Louisiana shore on the sand bar?

A. It was all sand bar until it was cut off.

Q. I know that it was a bar. You understand my question, do you?

A. No.

Q. Captain Prince, here we have Willow Point and a sand [fol. 40] bar formed around Willow Point, as you say. That is true, is it?

A. Yes, sir.

Q. Where did that tow head form in the sand bar in front of Willow Point? How far from the main land?

A. Where the cut off was made.

Q. Now, a tow head—I will try it again—formed on the sand bar in front of Willow Point. How far was the tow head from the bank, the Louisiana bank, on that sand bar?

A. The foot of it was about four miles.

Q. I am talking about the first one that you said was formed. I am not saying down the river. I mean how far east?

A. I cant tell you.

Q. Why cant you tell?

A. Because I don't remember the points of the compass there.

Q. How far was it from the Louisiana shore on the sand bar in the direction of Mississippi—I mean the tow head. Now, I don't care whether it was northeast or southwest. I just want to know how far the tow head was from the main bank of the Louisiana shore?

A. It extended from Willow Point down along the bend of the river opposite Woodland Landing, about four miles.

Q. That comes down south along the river, does it?

A. Yes, sir.

[fol. 41] Q. It did not form along down there four miles did it?

A. No, sir.

Q. How far was it from the shore, the Louisiana shore in the sand bar when it formed?

A. How far from the shore?

Q. Yes, sir; that is what I'm asking you?

A. I tell you, Judge, I don't know. If you know what a tow head is——

Q. I know what you told me. You just told me what one was, but no matter whether I know about it or not——

A. Well——

Q. I have heard them called different things from what you have said. I have heard other river men say that they grew up from the river and formed without being tied to a stationary sand bar. Have you ever seen a sand bar in the middle of the river?

A. Yes, sir; and watched them grow.

Q. And tow heads form out on them, don't they?

A. Yes, sir.

Q. Certainly, and they are not connected with either shore of the river, are they?

A. Sometimes.

Q. Sometimes, and sometimes not?

A. Yes, sir.

[fol. 42] Q. And you say that the sand drifted up and made the formation called a tow head? That tow head on the Louisiana shore, we will call it?

A. Yes, sir.

Q. Now, here is Willow Point, is it Captain?

A. Yes, sir.

Q. And here is the Mississippi side of the river?

A. Yes, sir.

Q. The sand bar formed on the Louisiana side and began extending out, did it?

A. Yes, sir.

Q. Now, going out. Instead of going down, it extended out how far? How many hundred yards was it from the shore out where that tow head first started, first had its inception?

A. About 400 yards where the cut off took place.

Q. About 400 yards?

A. Yes, sir.

Q. Now, it is true, that there were high points on that sand bar, as you say?

A. Yes, sir.

Q. Then the high points would show an elevation up above the other land both towards the Louisiana shore and towards the Mississippi shore, would it?

[fol. 43] A. Elevation—how?

Q. An elevation. Higher than what it was behind it and higher than what it was in front of it because these trees and bushes on it would catch the sand as it was blown and carried up there as you have explained?

A. Yes, sir.

Q. Then the elevation was higher? It must be?

A. Yes, sir.

Q. If that be true then, if that be true that it was 400 yards from the Louisiana shore—you say it went down the river—call it down the river?

A. Yes, sir.

Q. Now then, if that be true, the tow head forming first, ought to have the heaviest timber on it, ought it, and was higher?

A. Yes, sir.

Q. Then, if there was a difference between the tow head elevation and the sweep across from that tow head over towards the Mississippi shore, it will show a different elevation in the tow head, will it?

A. Yes, sir.

Q. It is bound to do it?

A. Yes, sir.

Q. Now, where the cut off was made you never knew whether that was the old bed of the Mississippi River or [fol. 43½] not, did you, in there on Willow Point?

A. Never in my time; no, sir.

Q. You don't know that now?

A. No, sir.

Q. Now then, did the old bed of the Mississippi river ever fill up in between the Louisiana shore and that sand bar?

A. So far as I know it did not.

Q. That's what your statement is here to the court?

A. Yes, sir.

Q. Now, you say after the cut off of 1912 the Mississippi river began to fill up from Tennessee landing. Tennessee Landing is in Mississippi?

A. Yes, sir.

Q. That is Tennessee plantation?

A. Yes, sir.

Q. And it began to fill up at Tennessee plantation. How far is that north relative to Willow Point?

A. About four miles.

Q. Is it four miles north of Willow Point?

A. Yes, sir.

Q. And the river began to fill up at that point, did it, Captain Prince?

A. Yes, sir.

Q. Did the Mississippi shore make any advancement,—make land?

[fol. 44] A. From Tennessee Point it did.

Q. Yes, sir; and anywhere else?

A. No where along Albemarle Bend.

Q. Albemarle Bend, that is the old Chotard place?

A. Chotard is in front of the Bend.

Q. Did it make land any there?

A. No, sir; very little.

Q. Do you know of a great big bar in front of Tennessee Landing?

A. Yes, sir.

Q. How wide would you say that water is there along Tennessee Landing going towards the Louisiana shore from the Mississippi side?

A. About close to a mile wide.

Q. Is that all?

A. Well, I don't know about that.

Q. You don't know then how wide it is?

A. I know it is that much, but I don't know whether it is more or not.

Q. You don't know whether it is more or not? You say that you don't know whether it is more or not, Captain? Is that what you say?

A. No; I don't know.

Q. That is what I thought. Now, how far down the river from Tennessee Landing does it extend right now?

[fol. 45] A. More than four miles.

Q. In other words, after the cut off was made and formed at Tennessee Landing it extended four miles below and you say was a mile wide, and maybe more?

A. Yes, sir.

Q. Does Louisiana claim that?

A. I don't know.

Q. That never attached to any tow head, did it?

A. No, sir.

Q. But the bar extended down the river, you say, about four and a half miles from Tennessee Landing?

A. From Tennessee Point.

Q. I mean Tennessee Point.

A. Yes, sir.

Q. Now, Captain, you don't know anything about 1890, do you?

A. No, sir.

Q. When you went on the river in 1897 did you go up through Albermarle chute?

A. I don't know where Albemarle Chute is without you call it Albemarle Bend.

Q. What do you call Albemarle Bend?

A. That was between that river up until 1912-1913.

Q. You don't know where Albemarle Chute was or what it was?

A. I don't know what you call Albemarle Chute. I don't [fol. 46] know where it is.

Q. You don't know?

A. No, sir; I know where Albemarle Bend is. I have been through there many a time.

Q. You said you were on a tow boat in 1897?

A. Yes, sir.

Q. Were you carrying frieght to New Orleans?

A. No, sir; towing timber.

Q. Towing timber?

A. Yes, sir.

Q. For whom?

A. Fisher Lumber Company, and other different lumber companies. The Burton Lumber Company.

Q. To New Orleans?

A. Yes, sir.

Q. And you say that you had been observing that place from six to ten times a year?

A. Yes, sir.

Q. Where would you get the timber from—where would you get the timber?

A. From different points.

Q. Well, tell me where it was?

A. Well, Caroline Bar.

Q. Where is Caroline Bar?

A. Caroline Bar is about 110 miles above Vicksburg.

[fol. 47] Q. How far is Willow Point above Vicksburg?

A. About forty miles.

Q. You got it from Caroline Bar. Is that on the Mississippi side or on the Arkansas side?

A. The Mississippi side.

Q. Well, where else did you get it from?

A. From Pittman's Landing.

Q. Where is Pittman's Landing?

A. Pittman's landing is along north of it on the Mississippi bank of the river.

Q. How far from Vicksburg?

A. About a hundred miles.

Q. That would make it up about Greeneville, would it not?

A. No, sir; south of Greeneville.

Q. How far is Greeneville from Vicksburg?

A. It is 150 miles.

Q. Yes; that is right. I know now. Well, where else?

A. Well, at a number of places. I don't just recollect them now. I can't recall.

Q. You were not in the towing business all the time that you were on the river, were you?

A. No, sir; not all the time.

Q. When was it that you first got on the river? When did I understand you to say that you first went on the river, Captain?

[fol. 48] A. I was on the river from the fall of 1897 until 1902.

Q. In what business?

A. Tow boat business.

Q. And you went to those two points you have named——

A. We went every where.

Q. Where did you go?

A. We landed all along the river.

Q. You did?

A. Yes, sir.

Q. With a barge?

A. Wherever we had business we landed.

Q. You would land with a barge? I understood you to say you were towing logs?

A. Yes, sir.

Q. And that was your business?

A. Yes, sir.

Q. So your business was to land and pick up logs, and you have told me two points that you have done it. That is all that you have told me, is it?

A. We towed them out of Eagle Lake.

Q. That is not up any further, is it?

A. No, sir.

Q. So that would not have anything to do about trying to find out whether you are in a position to know about these other things. The three points from which you say you got [fol. 49] these logs, two of them was above this point in litigation, and the other was below it?

A. Yes, sir.

Q. And those are the facilities and the chances you had to know the river?

A. Yes, sir; I had to know the river.

Q. You do not know anything about the river prior to 1897?

A. No, sir.

Q. Very well, Captain, that is all.

(Witness excused.)

ERNEST NEWMAN, having been called as a witness on behalf of the complainant, was duly sworn and testified as follows:

Direct examination.

By Mr. Dale:

Q. State your name, please?

A. Ernest Newman.

Q. What is your age?

A. I am thirty-seven.

Q. Where were you born?

A. In East Carroll Parish, Louisiana.

[fol. 50] Q. At what point in East Carroll Parish, Louisiana?

A. Willow Point Plantation.

Q. Now, I will refer you to a map marked Plaintiff's Exhibit C, or Complainant's Exhibit C, I should say, and will ask you if the place marked Willow Point on that map is the place you have referred to—the Willow Point Plantation that you referred to?

A. Yes, sir.

Q. That is the Willow Point you referred to, which is above Henderson's Landing?

A. Yes, sir.

Q. And below——

A. Salem.

Q. Salem?

A. Yes, sir.

Q. Who owned that place at the time?

A. Walter A. Newman.

Q. Was Mr. Walter A. Newman a relative of yours?

A. My father.

Q. What year were you born?

A. November 8, 1888.

Q. How early or how far back do you recollect the conditions that existed with regard to the river there in front of Willow Point Plantation?

A. Well, I remember as far back as 1897 when I helped [fol. 51] drive cattle off the bar at this time.

Q. As far back as you can recollect about how far back had the bar extended from the main land, had that Willow Point extended out from the main land?

A. Do you mean back as far as I can remember?

Q. Yes, sir; in 1897?

A. I suppose about three miles—about three and a half miles.

Q. Did it or not continue to extend out?

A. Yes, sir.

Q. Did the bar grow?

A. Yes, sir.

Q. How far did it grow after; how far did it extend towards the Mississippi shore?

A. A mile and a half or two miles.

Q. How far would you estimate that it had extended altogether from the main shore up till the cut off of 1912?

A. About four and a half or five miles, I suppose, as near as I can judge.

Q. How long did you live at Willow Point?

A. Until 1907.

Q. After you left Willow Point Plantation where did you go, Mr. Newman?

A. Lake Providence.

Q. Is that in the same parish?

A. Yes, sir; about 25 miles north of Willow Point.

[fol. 52] Q. Well, did you afterwards visit Willow Point?

A. Yes, sir; I visited there frequently hunting geese.

Q. How frequently?

A. Practically every winter.

Q. Where did you visit Willow Point Plantation after you moved from there?

A. We had a camp in there, a cabin, and we would come down there for a number of years hunting.

Q. Your old home was on Willow Point plantation?

A. Yes, sir; and after we moved off we kept that camp down below.

Q. Was there a levee near your home?

A. Yes, sir; the State Levee ran about fifty or 100 yards behind out house.

Q. At the time of your earliest recollection?

A. Yes, sir.

Q. Do you know whether or not the State Levee was subsequently moved back further?

A. Yes, sir.

Q. Moved further back?

A. Yes, sir.

Q. How far?

A. About two and a half miles.

Q. Do you recollect the character of timber on the main land?

[fol. 53] A. Yes, sir.

Q. What was it?

A. On the main land?

Q. Yes, sir?

A. Cottonwood and willow principally; some gum and some oak.

Q. What was the character of the timber on what was called Willow Point?

A. Outside the levee?

Q. Outside the main shore?

A. Principally cottonwood and some willow.

Q. Was there an island between Willow Point and the main shore from your earliest recollection in 1897——

A. No, sir.

Q. Wait until I finish my question—until the cut off in 1912?

A. No, sir; there was not.

Q. Do you recollect about the time the cut off occurred?

A. Yes, sir.

Q. When was it?

A. About 1912 or 1913.

Q. Now, what do you mean by "cut off?"

A. Well, the river changed its channel. It cut through that sand bar—cut all the way through it—cut across this point.

[fol. 54] Q. Do you know anything about the presence on that bar prior to the cut off that was called Newman's Tow head?

A. Yes, sir.

Q. What condition was this bar—this Newman Tow head at the time of your earliest recollection?

A. What?

Q. Was the Newman tow head there as far back as you can recollect?

A. Yes, sir.

Q. Was that connected with the main shore—with the main Louisiana shore?

A. Yes, sir.

Q. Was the river or anything of that sort between Newman's tow head and the main shore of Louisiana,—the main Louisiana shore?

A. No, sir.

Q. Could you go on that land at the various stages of the water from the main shore, on the Louisiana shore, on Newman's tow head?

A. Yes, sir.

Q. Where was the main channel of navigation in the Mississippi River as to the Newman tow head from the time that you can recollect?

A. On the east side.

Q. Between Newman's tow head and the Mississippi shore?

A. Yes, sir; on the Mississippi shore.

[fol. 55] Q. After the cut off of 1912 which side of the channel did it leave Newman's tow head?

A. On the east side.

Q. On the Mississippi side?

A. Yes, sir.

Q. Do you recollect whether or not—as you say, the bar extended out, the Willow Point Bar, which belonged to your father—extended out eastwardly towards the Mississippi shore, if the Mississippi shore was caving?

A. Yes, sir.

Q. Do you know whether any revetment work had been done there by the United States Government?

A. Yes, sir; I know that they had been over there, but I don't remember just exactly what year it was. But I knew their boats had been there on several occasions putting down mats.

Q. What was the character of the timber on Newman's tow head?

A. Willow and cottonwood.

Q. What was the size of the timber on Newman's tow head in 1897, as well as you can recollect?

A. About eight or ten feet high.

Q. What was the size of it, as well as you can recollect, at the time of the cut off in 1912?

A. There was some good size timber on it at that time and I reckon some was about eighteen inches in diameter.

[fol. 56] Q. Do you know what size trees are now on that Newman tow head, which is now on the east side of the Mississippi river—do you know what size timber is on that land now, Mr. Newman?

A. No, sir; I don't know exactly how it is. I have never paid much attention to it.

Q. Who claimed Newman's tow head?

A. We did.

Q. How did it get your name?

A. By our family living on it—on Willow Point Plantation—the Newman family.

Q. You say, do you, that Willow Point and Newman tow head was considered as belonging to your father?

A. Yes, sir; we had cattle running on it—a cattle range on it.

Q. Do you know where it was you paid taxes?

A. Yes, sir.

Q. Where?

A. East Carroll, Louisiana.

Q. Did you pay any in Mississippi?

A. No, sir.

Q. Did you ever hear of such an island existing as Tullow Island?—

A. I can't say. I have heard that, as a general report, that there had been such an island. I don't remember it [fol. 57] at all.

Q. Has there such an island existed since you can recollect?

A. No, sir.

Q. Up to the time of the Newman cut off there was no island at all in the Mississippi river at that place?

A. No, sir.

Q. The first island made there was by the cut off cutting apart the Newman bar and leaving it on the east side of the river, is that true?

A. Yes, sir.

Q. When did you first hear of this land on the east side of the Mississippi River being claimed by the Mississippi representatives?

A. Mr. Guilfoyle spoke to me about it—about being a witness in this case. He is a lawyer in Lake Providence.

Q. You never knew of it until this year when you were requested to be a witness in this case?

A. That's the first time that I ever knew of it; yes, sir.

Q. Do you know anything about the sections or townships over on the Mississippi side of the river?

A. No, sir.

Q. That is all.

Cross-examination.

[fol. 58] By Mr. Butler:

Q. Do you know what description your father's plantation was—Government numbers?

A. No, sir; I do not.

Q. You don't know them at all?

A. No, sir.

Q. Do you know what township and range it was in?

A. No, sir.

Q. Do you know whether it was in lots or government quarters?

A. No, sir. It was entered by my grandfather years ago.

Q. Did your father live there?

A. Yes, sir; he died there.

Q. Do you know how your father paid his taxes?

A. Do you mean where he paid them?

Q. Was it by government divisions or——

A. (Interposing.) No, sir; by assessment—ordinary assessment?

Q. Do you know the first time that he paid the taxes on that land?

A. No; I don't.

Q. You have a custom over in Louisiana in paying your taxes to show a description of your property—the approximate number of acres, do you?

[fol. 59] A. I don't believe I do; no, sir.

Q. What?

A. I don't think so; no, sir.

Q. Isn't there a place on the assessment rolls to show the description of the land and how many acres in the tract?

A. I believe that it would show on the assessment roll but it would not show on the receipt. I don't think that it shows on the receipt.

Q. Shows on the assessment roll?

A. Yes, sir.

Q. Did you or your father or any one connected with this Newman plantation, at any time have assessed in Louisiana this part running out there from three and a half miles or more that you have been talking about?

A. I don't know that we were ever *were* assessed with it; no, sir.

Q. You don't undertake to say that this land was not assessed in Mississippi from 1823 on up to 1896?

A. I can't say about that.

Q. Did you ever pass by Island No. 98?

A. No, sir.

Q. Did you ever hear your father talk about Island No. 98?

A. I might have heard just general talk mentioned [fol. 60] casually about there having been an island over there, I believe, a little bit north of Chotard, by that name, or Tullos Island,—Island No. 98.

Q. Do you know anything about St. Francis Chute?

A. Yes, sir.

Q. In 1897, how far east of St. Francis Chute to the head of it?

A. Which direction,—east?

Q. Yes, sir.

A. It was very near at St. Francis at that time. There was a sand bar up beyond, right between—it might be going east. It is about four or five miles.

Q. In 1897?

A. Yes, sir; from the lower end from St. Francis to the tow head it is quite a stretch.

Q. Do you know where Henderson's Landing is?

A. In Mississippi?

Q. Yes, sir.

A. Yes, sir.

Q. Do you know whether a sand bar formed there except down in a southeast direction?

A. I don't know of any sand bar over there.

Q. You don't know anything about even a bar over there?

A. No, sir.

Q. Do you know anything about some vessel being sunk [fol. 61] over there and a sand bar formed and extended across and cut off the original channel there?

A. Around by Duvall's?

Q. I don't know about Duvall's. I am talking about the Tennessee Bar.

A. Is that one—Well now, let me see. There is Magna Vista and Duvall's. It may be that one went out above Tennessee Landing.

Q. Tennessee Landing is northeast of your father's plantation, isn't it?

A. No, sir; Duvall's landing is northeast.

Q. Do you know where Dumbarton's landing was?

A. No, sir; that must not have been a big landing.

Q. Do you know where it is?

A. No, sir.

Q. And Ingomar?

A. Yes, sir; that is further down the river.

Q. Let me go back. Do you know whether Dumbarton—whether Tennessee Landing is further up the river than Dumbarton's landing?

A. No, sir; I don't know.

Q. Do you know where Rawlings Landing was?

A. Yes, sir.

Q. Where was that?

A. North of Willow Point on the Louisiana side.

[fol. 62] Q. Do you know where Duvall's landing is?

A. Yes, sir; noetheast of Willow Point on the Mississippi side.

Q. And Ingomar?

A. Yes, sir; that is further down the river.

Q. Alnemarle plantation?

A. No, sir; I don't know that.

Q. Did you know Maj. Higgins?

A. No, sir.

Q. Do you know when his plantation caved into the river?

A. No, sir; I did not know him, and I did not know of his plantation at all. I never was over on the Mississippi side,—on that side.

Q. You don't know whether there was a small channel that separated Maj. Higgins' plantation from the shore line or not, do you?

A. No, sir; I do not.

Q. Do you know where the Purnell plantation is?

A. No, sir. Mr. Purnell came across the river to hunt with us quite a number of times, but I don't know where his plantation was.

Q. You don't know whether a small channel separated his plantation from the shore line or not, do you?

A. No, sir.

Q. Now, the Brown plantation, do you know where that [fol. 63] was?

A. No, sir.

Q. You dont know whether there was a small channel that separated the Brown plantation from the main channel of the river or not, do you?

A. No, sir.

Q. Do you or not know where the Chilton Plantation was?

A. No, sir.

Q. You dont know whether there was a small channel that separated the Chilton plantation from the main channel of the Mississippi River or not, do you?

A. No, sir.

Q. You dont know whether there was an island over there or not, do you?

A. Not along from the Mississippi shore. I have been all the way around that shore.

Q. Do you know whether there was or not?

A. I know there was no island. I have been all the way around on that river there.

Q. Any channel along there or not?

A. No, sir; not that I know of.

Q. What?

A. No, sir; not that I know of.

Q. Do you know where Chotard Landing is at present?

A. Yes, sir.

[fol. 64] Q. Is there or not a body of water extending in a general northerly direction from the present Chotard Landing?

A. Yes, sir; behind this island.

Q. And forms a lake, does it?

A. Practically it does.

Q. What do you mean by practically?

A. It is a lake in low water, and ordinarily there is no river. It is just a chute that goes back in there.

Q. Well, does the chute extend on across up Albemarle plantation and go back into the river?

A. It does not go back in the river now.

Q. That goes down to the Tennessee bar,—extends down and connects up?

A. It does not connect up with the bar. It extends down there a little at the cut off.

Q. How large is the largest cottonwood timber, Mr. Newman that is growing down there on that point you call the Newman tow head, at this time?

A. I would have to know the measurements of it in order to be accurate. I would have to be there to tell you that. I jusge it to be about two feet.

Q. Would you be surprised to learn that some of it was over three?

A. Why, no, sir; a quite a few there might be that large. It will grow very rapidly on that sand bar.

[fol. 65] Q. Do you know where the old river channel of 1823 south of Willow Point plantation was?

A. Where the old river channel was?

Q. Yes, sir?

A. No, sir; I didn't know there was an old river channel in there.

Q. Does not the water back up in the old channel now?

A. There is a little chute that runs off from Henderson, but there has never been no channel—just a little chute behind the bar.

Q. Dont you know that when the water is high now that it goes up the old channel for more than a mile? I dont mean when it overflows, but just when there is a comparative high stage of the water?

A. There is just a kind of a slough there that runs up to Henderson's, and it has been there ever since I can remember.

Q. And that is approximately east of the land down there in Lot 8, south of Willow Point plantation?

A. Where? I didn't hear you.

Q. It is a point approximately east of Lot 7 and Lot 8, a general southeast direction from Willow Point plantation, is it?

A. No; it is almost due south.

[fol. 66] Q. Have you seen the map delineating the property which it is claimed accreted to the Louisiana side,—to the Willow Point plantation?

A. What?

Q. Have you seen the map showing or disclosing the property which the State of Louisiana claims in this case accreted to Willow Point plantation?

A. Yes, sir.

Q. This map shows Willow Point plantation as Lots 6, 7 and 8 on the Louisiana side, does it not?

A. Yes, sir.

Q. That is Exhibit J. It shows the Newman tow head going out here in a general northeast direction for five or six miles?

A. Yes, sir.

Q. Now, there is more than five thousand acres of land in that map, is there not?

A. Yes, sir; I would judge there would be.

Q. Now then, did the State of Louisiana, or your father, or anybody else who ever owned this property at any time ever assess themselves with the 5,000 acres of land shown here on this Newman tow head, Exhibit J, for taxes on it?

A. Well, I hardly think so. When the levee was moved back our taxes at that time were considerable reduced. We did not have very much taxes over there. They moved the

levee back two and a half miles and put us outside of the [fol. 67] levee, and we had practically no taxes.

Q. This land was not carried on the assessment rolls?

A. I don't know whether it was or not. We used it as a range—had cattle out there on the range.

Q. Where was the old channel as shown on the map?

A. There never was a channel in there as I remember. Not that I can remember.

Q. St. Francis chute?

A. That little belt of white sand that came down from the main shore. There is another island here covered with timber. This in here is larger than this, because this was made first. This was made first over here. That was made and the sand bar extended out and another one was made in here, but there was no channel through there.

Q. Now, is Willow Point plantation—was it Lots 6, 7 and 8 right in here?

A. I believe it was; yes, sir.

Q. That's where it was, wasn't it?

A. Yes, sir.

Q. Now, isn't the old channel right here about, right along down here in this direction?

A. I don't know of any channel in there.

Q. Isn't it right there today?

A. Not that I know of.

Q. From eight to ten feet lower than this land up here in Section 30 and this land down here in 31, right there on [fol. 68] the ground today?

A. Well, there may be, but you see this chute that comes through here is a little narrow chute that comes down along the main shore, not in the island. The current in high water will pass up through here, and comes over seven or eight miles around the bend, and we call that St. Francis.

Q. I want to ask you if you would go in there today if there is not a clear delineation of this channel up in Sections 21 and 20?

A. Do you mean on the island that has been cut off?

Q. Yes, sir?

A. No, sir.

Q. Do you know where this man lived that had a little camp over there on section 20?

A. After that cut off?

Q. Yes, sir? Since 1912. You have been down there every winter?

A. I have not been down there all along, but I have been down there hunting geese.

Q. Do you know whether or not there are a lot of cottonwood trees growing down there on Section 20 upon an elevation of some ten or fifteen feet above the present willow brake in there, from which all of the sand has washed away from the roots of the cottonwood trees? You have seen that down there on those willow banks, have you?

A. Yes, sir; I remember when the sand was put in there, [fol. 69] built in there, and the black sand back on top.

Q. Now, you say you remember that it was built in there?

A. Possibly; yes, sir.

Q. When was it built in there?

A. Well, it was in 1903, in the high water of 1903, a good deal of it.

Q. There never has been any channel around this way since you can remember?

A. The river broke away early in 1916.

Q. And you think it washed away——

A. (Interposing.) The channel has always been around this way.

Q. That is what we thought, thank you. When you say around "this way," you follow the line south?

A. Is this Tullos Island and this the cut off? The river always, ever since I can remember, has been on the east side of Willow Point, that is, until the cut off of 1912 and 13.

Q. I refer now to a line on Exhibit G, that runs across Sections 18, 17, a corner of 16, and 21, across 28, and back around here. Do you know whether Section 16 all went into the river or not?

A. I don't know about any section at all.

Q. In 1894 did section 16 all go in to the river?

A. I don't know.

[fol. 70] Q. Didn't Issequena give another section for a school house over there because it caved in the river in 18-4?

A. I don't know.

Q. That the sudden break in the river around there washed away Section 16?

A. No, sir; I don't know that.

Q. Do you know, or do you say that Section 30 here, approximately east of Section 8, which is identified as being a part of Willow Point plantation——

A. (Interposing.) I am not positive about any section. I am not acquainted with the sections at all.

Q. I am talking about the Louisiana side?

A. That seems to be the location of it.

Q. Section 30 is approximately east. Now, how large are the largest cottonwood trees growing over there?

A. I don't know.

Q. Have you been over there lately—along in there?

A. Do you refer to this——

Q. (Interposing.) I am talking about this growing on Section 30.

A. I don't know. I have never been on 30.

Q. You have never been on 30 in your life?

A. Not that I know of.

By Mr. Dale: We object to that for the reason that it is misleading, in that he points out to the witness a section [fol. 71] formerly indicated as a part of Tullos Island, and the witness has stated that there was no Tullos Island that ever existed within his recollection.

By the Commissioner: Let the objection be noted, and it will be consider- at a later date, when the whole testimony is considered.

By Mr. Butler:

Q. Do the Newman people still claim the Louisiana side?

A. No, sir.

Q. Who did you sell it to?

A. Martin Hamley, of Lake Providence.

Q. When was that?

A. I don't remember exactly, but about 1908 or 1909.

Q. After you claimed that it had formed there?

A. Yes, sir.

Q. How many acres of land was in that deed?

A. I don't know.

Q. Did you know at that time anything about an open plantation being over there on this land on what was called Newman's tow head in 1896?

A. An open plantation?

Q. Yes, sir.

A. There was no plantation over there.

[fol. 72] Q. You say there was not?

A. Not in 1896,—not on the Newman Tow Head.

Q. On what you say was the Newman tow head?

A. No, sir; I don't know anything of it. I never heard of it. I don't remember riding over it until about '97. I kept the cattle off of that tow head in '97. The water in '97 was high and came through the depression on *the* where the channel came through afterwards. The water came in and I had to go through with a boat and run these cattle off.

Q. That was in '97?

A. Yes, sir.

Q. How old were you then?

A. Nine years old, I reckon. About nine years old.

Q. You don't know anything about a plantation being there in '96?

A. No, sir.

Q. Do you know about when Section 16 went into the river?

A. I don't know about Section — at all. I can't tell you about that.

Q. But anyhow, you didn't know of any plantation being over there on the tow head?

A. No; I did not. Not to my recollection there never has been any plantation there.

Q. That is all.

[fol. 73] Redirect examination.

By Mr. Dale:

Q. Counsel for defendant have been asking you about Exhibit G, which shows the survey of December 22, 1823. Can you recollect that far back.

A. No, sir.

Q. Do you know anything about the section numbers as they existed in 1823?

A. No, sir.

Q. Do you know anything about the Section numbers in Louisiana or Mississippi as they exist now?

A. No, sir.

Q. Have you ever known?
A. No, sir.
Q. Could you locate a section number?
A. No, sir.
Q. When you were asked about the section numbers here in Section 20 and Section 21, which was on Tullos Island in 1923, you say that you don't know anything about such an island existing as Tullos Island?
A. I have heard of it, but have never seen it.
Q. Has any such island ever existed in your recollection?
A. No, sir.

(Witness excused.)

[fol. 74] The hour of adjournment having arrived, a recess is here taken until 9 o'clock A. M., Tuesday, October 5, 1926.

Tuesday morning, October 5, 1926, at 9 o'clock met pursuant to the above adjournment, and the taking of depositions in this cause is proceeded with.

All parties present as of yesterday.

GEORGE R. NEWMAN, called as a witness on behalf of the complainant, having been duly sworn, deposed and testified as follows:

Direct examination.

By Mr. Dale:

Q. You are Mr. George R. Newman?
A. Yes, sir.
Q. Mr. Newman, how old are you?
A. I am forty years old.
Q. In what year were you born?
A. In 1886.
Q. Where were you born?
A. Willow Point, Louisiana.
Q. We had better identify Willow Point. Let us get the map there No. C which has been introduced in evidence [fol. 75] heretofore, and I wish you would look at the map and notice the point on that map, or the place marked "Wil-

low Point," and I will ask you whether or not that is the Willow Point you refer to when you say you were born on Willow Point plantation?

A. As near as I can judge it is.

Q. I will ask you to state if the Willow Point to which you refer is the Willow Point just above the Henderson Plantation?

A. Yes, sir.

Q. Do you see Henderson plantation on that map?

A. Yes, sir.

Q. Hunt up Salem Plantation on that map.

A. I don't see it.

Q. Well, hunt it up if it takes you half a day.

A. Here is Pecan Grove here. I don't see any Salem.

Q. Do you see Raleigh?

A. Yes, sir.

Q. Do you see a red line marked back from Raleigh where Salem is marked? A distance back?

A. Yes, sir.

Q. Do you know whether there is a Salem Landing or not?

A. Yes, sir; there used to be a Salem Landing there.

Q. There used to be?

[fol. 76] A. Yes, sir. There might be now. I have not been there for a couple of years.

Q. Is the Willow Point plantation shown on the map, is that the one you refer to as having been born on?

A. Yes, sir.

Q. The place where you were born?

A. Yes, sir; the place where I was born.

Q. Who owned, if you know, Willow Point plantation at the time you were born?

A. My father.

Q. What was your father's name?

A. Walter R. Newman.

Q. And who is Mr. Ernest Newman, who testified on yesterday—any relation of yours?

A. Full brother.

Q. Is your father alive?

A. He is dead.

Q. Who was your mother?

A. Miss Beard.

Q. Her maiden name was Beard?

A. Yes, sir; Florence Beard.

Q. Was she any relation to Mr. I. D. Beard, who is here as a witness?

A. A sister.

Q. Is she living or dead?

A. Dead.

[fol. 77] Q. How far back can you recollect distinctly the conditions existing at Willow Point plantation with reference to timber, bars, and so forth?

A. About '93 I reckon. Along about that time.

Q. How old were you then?

A. Between five and six.

Q. You were born in '86?

A. Yes, sir; '86.

Q. And in '93 you would be seven?

A. Yes, sir; six or seven along in that time.

Q. Did you—what did you do, if anything, along about that period, at about that age?

A. Well, I could ride, and I went around with my father over the place. I rode, and started hunting at that time.

Q. Where were you hunting and where did you ride?

A. Over the field and on the sand bar,—over on the sand bar.

Q. What sand bar?

A. Willow Point sand bar.

Q. You rode all over Willow Point sand bar?

A. Yes, sir.

Q. Did you ride back of the Willow Point sand bar?

By Mr. Henry: We don't want to be captious, and are willing to give you all the lat/itude possible, but that question is so leading that we will just have to object to it. That [fol. 78] one and other- like it.

By Mr. Dale:

Q. Did you ride back from the river on Willow Point sand bar?

A. Yes, sir.

Q. Do you know where the original land was and where the sand bar was?

A. Well, where I imagine it was, from what they told me then, where the sand bar hit the main shore.

Q. How do you tell where the sand bar hit the main shore?

A. From the change of the land and the timber that was on it.

Q. What was the character of the timber on the main shore that you refer?

A. Well, there was cottonwood and willows, and a few other big trees, pecan and *sc*y*a*more.

Q. Gum and oak?

A. Some gum and some oak scattering. There was some cleared land in there.

By Mr. Henry:

Q. Are you testifying at the time that you were five years old? That's what your testimony is now is it?

A. Yes, sir.

Q. Go ahead.

By Mr. Dale:

Q. I will ask you if you had been over those places con- [fol. 79] siderable after you were five or six years old?

A. Yes, sir; I lived there.

Q. Is the condition just the same now, so far as the original bank is concerned, as it was when you can first recollect?

A. Yes, sir; but the bank—what bank is left there.

Q. Is there a depression or not at the place where you speak of as the old original main land?

A. It is right there now.

Q. What is the character of timber on what you call the Willow Point bar?

A. Cottonwood and willow.

Q. How far from what you call the main land was your home, as you recollect?

A. Well, it was about 100 yards, I reckon, where the house was at.

Q. Was it inside or outside the levee?

A. Next to the river.

Q. It was outside the levee then?

A. Outside the levee.

Q. Between the levee and the river?

A. Yes, sir.

Q. The levee as then was built, and was it after that time moved further back?

A. About two miles and a half.

[fol. 80] Q. How far was it from the main land to the end of the timber towards the Mississippi river when you can first recollect?

A. How far was it from the end of the timber to the Mississippi river?

Q. From the main land over to where the timber stopped growing?

A. About a mile and a half I reckon across the bar.

Q. How far out would the bar extend, as well as you recollect, beyond the timber, that part that had no timber on it?

A. Well, there was a depression that had no timber on it, and that was very narrow, and then there was a bunch of timber there, and from that out I reckon it was about a mile.

Q. How far was it from what you have termed the main land out to the water's edge, as well as you can recollect?

A. About a mile and a half. Something like that. Maybe a little more, as near as I can remember. I did not pay any attention to it then.

Q. Did or not the bar extend in an easterly or northeasterly direction towards the Mississippi shore after you can first recollect?

A. Yes, sir; it did all the time further over here.

Q. And got larger and larger every year?

[fol. 81] A. Yes, sir.

Q. Was it a continuous bar all the way out?

A. Yes, sir.

Q. Could you walk from the main land at all times out to the river?

A. Yes, sir.

Q. How long did that condition exist?

A. How long did it exist, did you say? How long did it exist?

Q. Yes, sir; how long did it exist during your recollection?

A. Up until '12.

Q. 1912?

A. 1912, when it caved off,—cut off.

Q. Before the cut off in 1912, could you have walked out over the entire bar to the river's edge?

A. At any time except in high water. Real high water.

Q. Do you know whether or not prior to the cut off in 1912, during the period of your recollection, there was an island in the river—the Mississippi side of the rover, or an island at that time in front of the Willow Point plantation on which you were born and the main land of the Mississippi river, Mr. Newman?

A. None that I know of; no, sir.

Q. Were you well acquainted with that particular section out in there?

[fol. 82] A. Yes, sir.

Q. You were born there?

A. I was over there off and on all the time.

Q. Do you know, and can you tell us whether it is a fact whether there was or was not an island in there?

A. No, sir; there was no island there.

Q. You know positively that there was no island in there?

A. Yes, sir. I know there was not. No, sir; there was not.

Q. When was the first island made there and how was it made?

A. Well, the only place there was there before I knew anything about it at all.

Q. Well, was there a cut off there in 1912?

A. Yes, sir; the cut off made it though—there is an island there now, and that was made back in 1912.

Q. What was that island called after the cut off, as well as before?

A. Willow Point Island.

Q. Was your place there called the Newman tow head?

A. Yes, sir; the Newman tow head—same thing.

Q. On which side of the cut off was the Newman tow head left?

A. It was left on the Mississippi shore.

Q. On the Mississippi side of the cut off?

[fol. 83] A. Yes, sir.

Q. Now, what was the character of the timber on the Newman tow head before the cut off and after the cut off?

A. Willow and cottonwood.

Q. Had you been on the Newman tow head frequently before the cut off?

A. Frequently before the cut off, but not after the cut off.

Q. Have you been there since?

A. Not on the tow head; no, sir.

Q. Did you ever hear of Newman tow head or any part of Willow Point being claimed by Mississippi?

A. No, sir; at no time in my life.

Q. But you have heard of it since this suit began?

A. Yes, sir; since the suit began.

Q. Is that the first that you ever heard of it?

A. Yes, sir.

Q. Since this suit?

A. Yes, sir.

Q. I am through with the witness.

Cross-examination.

By Mr. Cheekmore:

Q. When did you leave Willow Point plantation?

A. When did I leave it?

Q. Yes, sir; when did you leave there?

[fol. 84] A. Well, it was sometime about 1907 or 1908.

Q. Where did you go?

A. We moved to Lake Providence, Louisiana.

Q. How far away is that?

A. About twenty-five miles.

Q. When were you back at Willow Point?

A. I went every year through the winter hunting there.

Q. Were you at Willow Point at the time the cut off was made in 1912?

A. No, sir; I was not there at the time the cut off was made but I was working above there at Salem and was there right after the cut off went through.

Q. Do you know where the channel of the river went after that?

A. After the cut off?

Q. Yes, sir.

A. Yes, sir.

Q. That was practically where the river runs now, is it not?

A. Yes, sir.

Q. Now, when did the tow head first reach out from Willow Point as far as the present eastern shore of the river?

A. Well, I don't know exactly. I don't remember exactly.

Q. Well, about when?

A. Well, from the eastern shore, about that far, as far [fol. 85] as I can recollect—it was out that far, as far I can recollect.

Q. I understood you to say that up to the time that you left there you could walk over to that tow head to its eastern and northern extremity?

A. Yes, sir.

Q. The land getting higher as you go to the north of the tow head, is that right?

A. Well, I don't know that it does. Some parts of it was higher and some parts were not. It was not level.

Q. The willows grew on the low part of it, did they, of the tow head?

A. Practically all over it.

Q. All over it?

A. There were willows all over the earth part of it. Wherever there was earth on it there was willows.

Q. Was there a clearly marked and defined *lined* line where the willows grew and then the cottonwood would begin?

A. Not on the tow head; no, sir. I don't think there was. There might be some little line around some little lake or something like that. There was one or two little lakes in there.

Q. Have you been on that tow head, as you call it, since the cut off?

A. No, sir.

[fol86] Q. You don't know what is there now?

A. No, sir.

Q. Did your father ever have any open, cultivated land on this tow head?

A. No, sir.

Q. As you recollect the situation when you were a boy, the entire tow head was covered with a growth of willow?

A. Yes, sir.

Q. No cottonwood at all?

A. No, sir. Well, yes, sir; cottonwood was on it too, of course.

Q. The cottonwood and willow were interspersed?

A. Yes, sir.

Q. That was what, you say?

A. Cottonwood and willow mixed together. They did not have any set thing. Willow was at one place and cottonwood the other.

Q. Willow will grow on ground that is lower than cottonwood, will it not?

A. No, sir; I don't know. It might. I think maybe cottonwood—or willow, I mean, might grow where cottonwood will not.

Q. Do you know where the channel ran before the cut off in 1912?

A. The channel of the Mississippi river?

Q. Yes, sir.

A. Yes, sir.

[fol. 87] Q. Do you know anything about any open land of several hundred acres west of that channel and towards the north central portion of that tow head?

A. North—do you mean west—west of the Mississippi river.

Q. Of the channel as it existed prior to 1912—the cut off, it was not there, was it?

A. West. That is west of the bar; yes, sir. There is an open field—apart of it is an open field west of the bar; yes, sir.

Q. I am not talking about west of the bar now.

A. West of the Mississippi river.

Q. On the bar but west of the channel prior to the 1912 cut off?

A. Yes, sir. West there was no open land. No open field. It was not open then. There was cotton wood on it then, but that had been opened.

Q. When had it been opened?

A. In '93—in '90 and '91 it was in cultivation.

Q. Who had it in cultivation?

A. My father.

Q. Didn't you state when you began your examination that your father had never had any open field on the tow head?

A. Well, I didn't say that. You said on the main land, not the tow head. There was no cultivation on the tow head at all.

[fol. 88] Q. Now, I am talking about the land that is now lying east of the cut-off of the present channel?

A. Well, there is no land whatever under cultivation on that land.

Q. You are certain and positive of that?

A. Yes, sir; not in my time and I know that there was no place on there cultivated by our people. I know that there was nothing on there as long as I lived there.

Q. You went down there frequently?

A. Kept cattle on it every year.

Q. What I am talking about is if you had any land in cultivation down there?

A. Not on that tow head; no, sir.

Q. That is what *ai* am talking about, the tow head?

A. No, sir.

Q. Between the channel as it existed between 1897 and 1912, the present channel?

A. No, sir; no land in cultivation at all.

Q. No land was ever in cultivation there?

A. No.

Q. Do you know anything about Tullos Island?

A. No, sir.

Q. Never heard of it?

A. No, sir.

Q. Do you know anything about Island No. 98?

A. No, sir.

[fol. 89] Q. You never heard of that?

A. No, sir.

Q. About how many acres are there in that tow head?

A. I don't know. I have not the slightest idea as to how many acres there are.

Q. You have not the slightest idea?

A. No, sir; I don't know how many acres there would be in it. I can't tell.

Q. About how many miles long is it?

A. Well, I reckon it is six or seven miles long.

Q. How wide?

A. The tow head itself was two or three.

Q. Two or three?

A. Yes, sir.

Q. Do you know anything about an old plantation headquarters on that land that we have been talking about?

A. No, sir.

Q. You don't know anything about that?

A. No, sir.

Q. You never heard of it?

A. No, sir.

Q. How long has it been since you have seen this land, Mr. Newman?

A. How long has it been?

Q. Yes, sir?

[fol. 90] A. I was there in the winter of 1910.

Q. You have not been there since?

A. I have not been down on the island. I went down there on after it was cut off but I did not go over it. I was over there in 1910.

Q. Was there an island there before the 1912 cut off?

A. No, sir; no island.

Q. Was there a channel?

A. No.

Q. There was no channel at all?

A. Not before 1912. In 1912 the cut off made the channel.

Q. How did boats get through there if there was no channel there?

A. What?

Q. How did boats get through there if there were no channel there?

A. The channel was around on the river, around on the Mississippi shore.

Q. How far—just wait until I finish my question and you will be able to answer better. Was there any channel at about where the present river runs prior to 1912?

A. No, sir.

Q. There was not?

A. No, sir.

[fol. 91] Q. Wasn't there back in the nineties, the time you have been talking about, three channels there at about this point?

A. Not that I know of.

Q. How is that?

A. No channel; no, sir.

Q. Have you examined the maps in this case?

A. No, sir.

Q. You have not examined them?

A. No, sir.

Q. If any of them show more than the one channel that you have been talking about that is not in accordance with your recollection of the conditions there, then, as I understand you?

A. No, sir; there wasn't any other channel. There wasn't but one there that I know of.

Q. When that tow head was built up, willows and cottonwood, either or both, grew up all over it?

A. No, sir; not all over it. There was a part of it that not a thing was growing on it because it was sand.

Q. Well, where the soil was good the cottonwood and willows sprung up?

A. Yes, sir.

Q. Did you all ever cut any timber off of that tow head?

[fol. 92] A. No, sir.

Q. Did you see any lakes in there?

A. Some lakes; yes, sir.

Q. What formed those lakes?

A. Why, the river.

Q. The river?

A. Yes, sir.

Q. All of that was land accreted?

A. By sediment in the river.

Q. Gradually?

A. Yes, sir.

Q. Inperceptible?

A. Yes, sir.

Q. That is the way it was done?

A. Yes, sir. That described it.

Q. And that is the way those lakes were formed, by the gradual building up of the land, which formed the lakes. Is that right?

A. It gradually filled up in some places, and left islands, and in other places it did not fill up level with the Mississippi river. They never filled up level—they never filled up all the same thing in one place.

Q. Did those lakes empty into the river?

A. Some of them did. A part of them did not. Some of them did when they got to a certain heighth,—when the [fol. 93] water got high enough.

Q. What part of the tow head were those lakes in?

A. I don't know that I could say about that part of it even.

Q. Now, you have been testifying about things that existed away back yonder when you were a child of six or seven years of age, that is correct is it?

A. Well, a part of it; yes, sir, and then he asked me questions about different times.

Q. I am talking about back in 1897?

A. Well, he asked me questions about that, and he asked me questions after that.

Q. I am directing your attention now back to these conditions that you described in 1897. You were then some six or seven years old?

A. Eleven years old then.

Q. You did not pay any attention to those sort of things at that time, did you?

A. In 1897?

Q. In '93 when you undertook to describe the conditions as they then were, you were six or seven years old?

A. Yes, sir.

Q. At that time you did not pay any attention to these things, did you?

A. No, sir; I didn't pay any attention to lakes or any-[fol. 94] thing like that.

Q. You did not pay any attention to the formation of the ground there did you?

A. Yes, sir; I knew about the width then and where it was, for I went over it, and I had to know it to get back home. I was riding around by myself and I certainly had to know to get back home.

Q. When you were six or seven years old you would ride up there six or seven miles over that tow head by yourself?

A. Yes, sir.

Q. And find your way back?

A. Yes, sir.

Q. How long has it been since you were first questioned about the conditions down there in 1893?

A. How long what?

Q. When you were first questioned about the conditions in 1893?

A. It has been about around two months ago. Something like that—maybe a month ago.

Q. Some thirty-three years after you had gone over this as a boy?

A. Yes, sir.

Q. Your recollection was still clear about it, was it, Mr. Newman?

[fol. 95] A. Well, it being my old home, of course, and being back there every year until I was a man, of course it is pretty good.

Q. ——.

A. Pretty clear.

Q. When did your family sell this property?

A. My great grandfather settled it.

Q. I say, when did they sell it?

A. I don't remember what year it was.

Q. Well, about what year?

A. It must have been '7 or '8, something like that.

Q. In 1907 or 1908?

A. Yes, sir: something like that.

Q. How many acres were in that Willow Point plantation that your father owned?

A. I don't know.

Q. Well, about how many?

A. I don't know. I never did know. I don't know how many. I can't say. I never heard.

Q. You knew the extent of this tow head and its size and its border throughout all these years, and you never tried to find out or know anything about the acreage of your father's plantation?

A. I don't know the acreage. I know the width of it.

Q. All right, give us the length, and maybe we can figure [fol. 96] the acreage.

A. I never knew anything about acreage or the numbers of land, either one.

Q. I am not talking about the numbers now. I am talking about Willow Point plantation which your family owned.

A. It was about a mile from the river to the back end of the place.

Q. How much the other way?

A. Running north and south I am talking about.
Q. East and west?
A. About the same distance, I reckon.
Q. In other words, about a section of land, was it?
A. Pretty near it.
Q. About 640 acres?
A. Yes, sir.
Q. Now, when your family sold this property did you sign the deed?
A. Yes, sir.
Q. How many acres did the deed convey?
A. I don't remember.
Q. Well, did it convey anything more than this whole square?
A. Well, I don't know. I don't remember. I suppose so. Whatever we had in Willow Point plantation. That is all that I know anything about. I suppose that all attached to it went.
[fol. 97] Q. The amount of land that you conveyed then did not impress you at all?
A. No.
Q. Did you undertake to convey the Newman tow head?
A. Well, I dont know if that was in the agreement. I dont know. I dont know. I dont know nothing about it. It was not necessary for me to know nothing about that.
Q. The point is, did you undertake to convey the Newman tow head?
A. No, sir.
Q. You did not?
A. No, sir; just Willow Point place.
Q. Did the Newman family claim the Newman tow head?
A. Yes, sir.
Q. You have never conveyed it?
A. No, sir; never had it surveyed.
Q. Do you now claim it?
A. No, sir; we sold the place. We dont claim it.
Q. Sold the place?
A. Yes, sir.
Q. But you didn't sell the tow head?
A. I suppose so. I reckon so.
Q. What was that last you stated?

A. You asked me did we sell the tow head and I told you the tow head I reckon was sold with the place. I dont [fol. 98] know nothing about it.

Q. Was your father living when the place was sold by the family?

A. No, sir.

Q. Was your mother living?

A. Yes, sir.

Q. Your mother and your brother and all of the children executed the deed?

A. Yes, sir.

By Mr. Henry:

Q. When did your home there on Willow Point cave into the river—the house?

A. I believe that it was in 1904 or 1905.

Q. In 1904 or 1905?

A. Yes, sir; the home—house.

Q. Caved into the river?

A. It might have been a little later. It might have been 1905 or 1906, or 1907. I dont remember just what year it was.

Q. In 1904, 1905 or 1906?

A. Yes, sir; somewhere along there.

Q. At the time that the house caved in the river the current was against the Louisiana shore, was it?

A. At the north end of the place it was.

Q. That is the part the house was?

[fol. 99] A. Yes, sir.

Q. Where was the house located on the place, the north end?

A. The north end; yes, sir.

Q. And that caved into the river in 1904 or 1905?

Q. The northeast corner of the place where the house was at.

Q. I say, that caved in?

A. Yes, sir.

Q. And at the time that it did cave in, of course the current in the Mississippi river was over across the Louisiana bank?

A. Yes, sir.

Q. That is a fact?

A. Yes, sir.

Q. That is where it was bound to be?

A. Yes, sir.

Q. When the house caved in the river it was some 150 or 200 yards outside of the levee, was it?

A. Yes, sir.

Q. Now then, if that be true, the house, the residence caved into the river before this cut off was produced there, is that right?

A. Yes, sir.

Q. Mr. Newman, you have been on what you call the tow head recently, have you?

A. No, sir.

[fol. 100] Q. I thought you said in answer to a question of Judge Dale that you had.

A. No, sir.

Q. You have not been there recently?

A. No, sir; not on the tow head.

Q. You have not been on the tow head since the cut off?

A. No, sir.

Q. You have been discussing this matter with the gentlemen who represent the State of Louisiana, have you?

A. Yes, sir.

Q. And you have been discussing it with the other witnesses, have you?

A. Well, I don't know. In a public way, I suppose so, with the other witnesses. Yes, sir; bound to be.

Q. Yes, sir; with the other witnesses?

A. Yes, sir.

Q. Now you have not then depended, in giving your testimony, you have not depended entirely on your recollection for those things that happened away back yonder?

A. Well, no; not altogether. I have depended on my recollection, of course, but it is going way back there, and my recollection has been improved from being there, and everything. My testimony has been from my own memory, though.

Q. But, I say, your recollection has been improved after [fol. 101] discussing this matter with other people?

A. Well, no, sir; I remember everything. It is very distinct.

Q. Then the testimony that you have given of the conditions there was at the time that you had formed your first recollections in 1893?

A. It was along at the time. I don't know exactly the time. It was along something in that time that I can remember.

Q. Did you fix it in 1893?

A. No, sir. I think that things first came to my attention there in 1891, as I remember the overflow and the levee breaking around the house, and I know that in 1893 I started hunting. That is the reason that I remember that. My father gave me a shot gun at that time and started me hunting.

Q. Do you remember exactly away back yonder when you started hunting? You were nothing but a little small boy. Do you remember absolutely about the time?

A. Well, about. I say that I remember the year. I don't remember all of the things, but I remember the year that I started hunting in.

Q. You remember about the levee breaking and the overflow? That was when you were small? That was an epoch in your life?

A. Yes, sir.

[fol. 102] Q. Now, you left the Point in 1907?

A. I think it was somewhere along there.

Q. That is what you said?

A. Yes, sir.

Q. Of course, if you have got it wrong you can change it, Mr. Newman?

A. Sometime in that time.

Q. This property was sold to Mr. Hamley that same year?

A. I don't remember whether it was or not. I was camped there, and I don't remember. I stayed a year or two after my mother left.

Q. You lived there in 1907?

A. Yes, sir.

Q. And the record shows, as I recall it, from the testimony of your brother, that the property was sold in 1907. That is right, is it?

A. I think it is, as near as I can remember.

Q. Now, I believe you told us that when you moved away you went to Salem?

A. No, sir; my mother and my brother went to Lake Providence.

Q. And you followed them?

A. Yes, sir.

Q. Did you go into business there?

A. I worked as deputy sheriff.

Q. Lake Providence is the county seat of that parish, as [fol. 103] I understand it?

A. Yes, sir.

Q. And that parish is East Carroll?

A. East Carroll; yes, sir.

Q. I believe you stated that if you returned to Willow Point that it was merely to hunt?

A. Yes, sir; after that I always went down there to hunt.

Q. I see.

A. Yes, sir; merely to go hunting.

Q. That was in the winter when the geese ans ducks were flying?

A. Yes, sir.

Q. That is all.

Redirect examination.

By Mr. Dale:

Q. You say that your residence caved in sometime between 1904 and 1907?

A. Sometime about that time.

By Mr. Henry: In 1906 he said.

By Mr. Dale: He said that it was 1907 and the record here will show it. He said between 1904, 1905, 1906 and 1907. If I am not correct the record will show it.

Q. I will ask you if you recollect the exact date that it [fol. 104] caved in?

A. No, sir; not the exact date.

Q. I will ask you to approximate it as near as you can. State the exact date that it was?

A. I don't really know what the exact date of it was.

Q. Do you know whether or not it was between 1904 and 1907?

A. Yes, sir; by other things that happened I know that it was within that time, but I don't remember just the year that it caved in.

Q. Did all of Willow Point cave away?

A. No, sir; I don't think it did.

Q. Do you know whether it did or not?

A. I don't know whether it is all caved yet or not. I don't know.

Q. When was the last time that you were at Willow Point, Mr. Newman?

A. I was there last winter, out on the bar, but I never went back to the main land.

Q. Was it caving then?

A. I never went back to the main land.

Q. I am not talking about the main land. You were on the bar?

A. Yes, sir.

Q. On the bar last winter?

A. Yes, sir.

[fol. 105] Q. Well, were you there previous to last year—when were you there previous to last year?

A. I was there in 1923.

Q. Was it caving then?

A. No, sir.

Q. When were you there previous to 1923?

A. Well, I was out there then some two or three years before. Let me see. It was in 1920 that we went down there to camp in 1918 or 1920. Just about that time there was a good bunch of us went down there and camped.

Q. Do you know whether or not, as a fact, all of Willow Point bar caved in?

A. No, sir; all of it has not caved in.

Q. Did it ever cave in?

A. No, sir; it never caved in.

Q. Do you know, as a fact, whether or not it increased in size?

A. It increased in size.

Q. In an easterly direction up until 1912?

A. Yes, sir; I know that it increased until that time.

Q. From the time that you recollect it until the fall of 1912 it had not caved in?

A. Yes, sir; that is right.

Q. And it has continued to increase in size year by year?
A. Yes, sir.
[fol 106] Q. And when it caved in it was just in the northern part?
A. Northeastern.
Q. The northeastern part?
A. Yes, sir.
Q. The river was running in what direction along at the northeastern part?
A. Well, it run—it came across to Willow Point place running east and west, pretty near it, and then it run—it went out towards the Mississippi shore and then south again.
Q. That part where the river ran east and west made the norrhern part of Willow Point bar come to the river?
A. Yes, sir.
Q. And that was the part of Willow Point that caved?
A. Yes, sir.
Q. But not the other part?
A. Not the eastern part.
Q. The other part, while the northern part was caving the other part was increasing in size?
A. Yes, sir.

By Mr. Creekmore: I have been thinking, if you will allow me, that I would interpose an objection to some of Judge Dale's questions. Some of them are leading.
[fol. 107] By Mr. Dale: I will withdraw the question and put it in another form. I will put it in different shape and another way so as to avoid your objection.

Q. The time that part of the place was caving another part was making?
A. Yes, sir.
Q. Now, what part was caving and what part was making, Mr. Newman?
A. The north part was caving and the eastern part was making.
Q. Did you ever know of the eastern part caving prior to 1912?
A. No, sir.
Q. Do you know whether it continuously made or not?
A. Yes, sir; it continuously made.

Q. From the point where you say was the main land in an easterly direction towards the Mississippi river,—not northerly,—how far, at the time did the willows and bar and all extend?

A. About five miles.

By Mr. Henry: We object to that as repetition. All that has been gone over with this wtiness.

By Mr. Dale:

[fol. 108] Q. How far from the main land, in an easterly direction, when you first recollect, had that Willow Point bar extended, approximately?

A. The willow part?

Q. Yes, sir.

A. Do you mean the earliest part of my recollection?

Q. Yes, sir.

A. Or the latter part of my recollection?

Q. I mean your earliest?

A. About a mile or a mile and a half from my earliest recollection.

Q. About a mile or a mile and a half?

A. Yes, sir.

Q. Was it ever less than that?

A. Not to my recollection; no, sir. I don't know.

Q. What changes have taken place, if any?

A. It gradually got larger.

Q. That is all.

(Witness excused.)

[fol. 109] T. B. Beard, called as a witness on behalf of the complainant, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Dale:

Q. You are Mr. T. B. Beard?

A. Yes, sir.

Q. How old are you, Mr. Beard?

A. I am fifty-nine years old.

Q. In what year were you born?
A. October, 1866.
Q. Where were you born?
A. In East Carroll parish, Louisiana.
Q. Examine this map which has been marked Exhibit C, Sheet 17 of the Mississippi River Commission, and see if you can find or locate Willow Point plantation?
A. Yes, sir.
Q. Is that East Carroll parish?
A. Yes, sir.
Q. How far is that place from where you were born?
A. About four or five miles, I guess.
Q. That is four or five miles north of Willow Point?
A. Yes, sir.
Q. About when you first recollect becoming acquainted [fol. 110] with that—you are acquainted with that place, are you?
A. Oh yes; verywell.
Q. About when did you first become acquainted with that place?
A. Well, about fifty years ago, I guess.
Q. Did you know Mr. Walter A. Newman?
A. Yes, sir.
Q. Did you marry any connection of his?
A. He married a sister of mine.
Q. Did you know Mr. Ernest Newman?
A. Yes, sir.
Q. And you knew Mr. George Newman?
A. Yes, sir.
Q. Witnesses in this case?
A. Yes sir.
Q. What relation are they to you?
A. My nephews.
Q. Did you or not visit your sister at that place often?
A. Quite often; yes, sir.
Q. What did you do when you would go down there?
A. Well, sometimes I would stay at the house, and frequently I would take a hunt—go around the bar with the [fol. 111] boys, and before they were large enough I would go with my brother-in-law.
Q. Do you know where the Willow Point Bar formation began and where the old main bank was?
A. Yes, sir; I think I do.

Q. About how far was that from what was the Newman residence?

A. Well, I don't know so much about distances. It was about 100 yards or 150 yards, or something like that. out in front of the house, right east of the house.

Q. Do you know which was the old bank there and which was the formation of Willow Point bar?

A. Well, the sand bar started right where it joined to the main bank.

Q. What was the difference in the character of the timber?

A. Well, there was not anything at all except in front of the house on the old soil.

Q. Any timber on the main bank?

A. Yes, sir.

Q. What was the character of that timber?

A. Well, it was cotton wood.

Q. And what else?

A. I don't remember.

[fol. 112] Q. Any oak, gum or hackberry?

A. No, sir; not in front of the house.

Q. I am not talking about in front of the house—back of the house on the main land?

A. Yes, sir; on the main land there was.

Q. What was the character of the timber 150 yards back of the house on the main land?

A. Well, I think there was——

Q. (Interposing.) Any sycamore?

A. Yes, sir; a few sycamore, gum, and I don't remember.

Q. Any elm?

A. Yes, sir; elm.

Q. What was the character of the timber on the bar?

A. Well, that was all cottonwood and willows.

Q. Now, at the time that you can recollect farthest back, how for out had that bar extended from the mainland? How far east?

A. I suppose about a mile and a half or two miles,—something like that. I dont know. It was quite a distance out.

Q. Did it extend out any farther afterwards?

A. Yes, sir; it continued to grow each year.

Q. How far did it extend from the main land at its farthest out up until 1912—how far out from the main land, if you can tell?

[fol. 113] A. Well, I suppose it must have been three or four miles. I don't know. Of course, I didn't measure it. I dont know exactly, but it was three or four miles. It might have been further than that.

Q. Was there any cut off of the river in there at that time?

A. At what time?

Q. Was there a cut off in the river at that time at that place?

A. Not at that time.

Q. At any time?

A. About 1912 I think there was a cut off there.

Q. Do you know anything about what is called the Newman tow head?

A. Yes, sir.

Q. What was the Newman tow head?

A. Well, you see the land began to rise. The main bar was already there, and this tow head began to grow, you know, decided to grow, and I dont know how much a year, but each year it got higher and higher, and finally it got large enough for large willows and cottonwood to grow on it.

Q. Was or not the bar you speak of on which this tow head arose attached to the main shore on the Louisiana side?

[fol. 114] A. Yes, sir; it was.

Q. Do you know of it being severed prior to 1912?

A. Not to my knowledge.

Q. Would you know whether it was or was not?

A. Certainly I would know; yes, sir.

Q. What character of timber was on the Newman tow head?

A. Willow and cottonwood principally. There might have been a few little sprouts of other stuff growing, but no timber to amount to anything. There was no timber, in other words, except willow and cottonwood.

Q. What was the size of the willow and cottonwood on the Newman tow head when you can first recollect?

A. It was quite small. Little bit of stuff.

Q. Approximately how tall?

A. Three or four feet high,—four or five. It grows very rapidly, you know when it comes out.

Q. Did or not your brother-in-law cultivate any part of Willow Point?

A. Oh yes, sir; he cultivated Willow Point.

Q. Did he or not cultivate a part of Newman's tow head?

A. No, sir; I dont think he did. Not that I know of.

Q. Do you know on which side of Newman's tow head and Willow Point bar the main channel of the river was prior to 1912 and at all times prior to 1912?

[fol. 115] A. It was on the east side; on the Mississippi side.

Q. Do you know whether there was an island between the extreme eastern part of that tow head and the Mississippi river, in the Mississippi channel of the river?

A. I dont know anything about an island.

Q. Do you know whether there was any there or not?

A. What?

Q. Do you know whether there was any in there or not?

A. There were not that I know of.

Q. If there had been an island there would you have known it?

A. I suppose I would. I would have been bound to have seen it.

Q. Did you ever see any there?

A. I never did.

Q. After the cut off which side of the cut off did the Newman tow head remain?

A. On the east side.

Q. Towards Mississippi?

A. Yes, sir.

Q. Do you remember whether there was any caving at any time on any part of Willow Point plantation?

A. There was caving on the northern part of the place.

[fol. 116] Q. Did it cave any on the eastern part?

A. No, sir; it did not.

Q. While it was caving on the northern part what was it doing on the eastern part?

A. As I remember it, it was extending out further east.

Q. In what direction did the Mississippi river run on the northern part of Willow Point?

A. On what direction?

Q. Yes, sir?

A. It run south—it run east and west like. On the northern portion of the place, you mean?

Q. Yes, sir?

A. It run east and west—it run east.

Q. The current was flowing east?

A. Yes, sir.

Q. Had you ever heard of any part of this land being claimed by Mississippi?

A. No, sir; I had not.

Q. Before you were a witness in this case?

A. No, sir; I had not.

Q. Now, I will ask you one other question. Who was regarded as the owner of Willow Point plantation and Newman tow head prior to the cut off?

A. The Newman heirs.

[fol. 117] Q. Who are the Newman heirs?

A. George Newman, Ernest Newman, my sister and her family.

Q. That is all. The witness is yours.

Cross-examination.

By Mr. Henry:

Q. Mr. Beard, Judge Dale asked you if anybody ever claimed Willow Point other than your sister and the other Newman heirs prior to the cut off, and you said that you never heard of any one?

A. Yes, sir.

Q. Mr. Beard, the cut off, you say, occurred in 1912.

A. I think something like that. I think it was in 1911, or 1912, somewhere along there?

Q. Now then, if this record here is, as testified to by the two Newman boys,—if that shows that Willow Point was disposed of by their mother, your sister and the two Newman boys, the Newman heirs, in 1907, then there was somebody who claimed the property prior to the cut off, wasn't there?

A. Well, I dare say, but I don't know anything about that, Mr. Henry.

Q. That shows how little you know about it?

A. It shows how little I know about the sale of it.

[fol. 118] Q. Well, that is a part of the evidence that is in here, and when Judge Dale asked you that question it shows how little you know about it?

By Mr. Dale: My question to him was if he ever recollected of anybody in Mississippi claiming it.

By Mr. Henry: You did ask him if he ever heard of anybody claiming it in Mississippi. You did ask him that question, and then you also asked him, if I understood you right, if he ever heard of any other one claiming it.

By the Witness:

A. The way I understood his question I thought that he was asking me if I knew of any one in Mississippi claiming the property.

By Mr. Henry:

Q. Yes, sir; and you answered that no. But any how, I will proceed with my cross-examination and ask you another question. That is all right. We will not argue about that, because the record speaks for itself, and it will show. I will ask you, Mr. Beard, being so familiar with all of the Willow Point property, you are also familiar with the number of acres which your brother in law owned which was known as Willow Point?

A. No, sir; I was not.

[fol. 119] Q. How could you be familiar with all of these things without knowing that?

A. Because I could see, that is all.

Q. Well now then, you knew of the northern point, you have stated, of Willow Point—you knew of the northern point, of the holdings of your brother in law on Willow Point? You knew that? You said that, didn't you, and you knew the northern boundary line then of the plantation?

A. Sure I did.

Q. And you knew the eastern boundary line?

A. Yes, sir.

Q. Now, you knew the northern and eastern part. Why didn't you know the southern part?

A. I knew where the southern line was, of course.

Q. How did you get that?

A. By seeing it—being shown to me. That is all.

Q. Why did he show it to you?

A. Why did he show it to me?

Q. Yes?

A. I would just be riding around along with my brother in law, and he would show me the line. That is all. Just riding around with him.

Q. Where did the southern line of Willow Point plantation of your brother in law's property divide and separate?

[fol. 120] A. I think it was the Bell plantation belonging to Mr. Foster.

Q. Mr. who?

A. Mr. George Foster.

Q. You think it was the Bell plantation?

A. Yes, sir.

Q. You don't know the number of acres, do you?

A. No, sir.

Q. You have no idea?

A. I have no idea.

Q. About how long a stretch was it along the river?

A. I don't know. I didn't measure it.

Q. I know, but you have some idea, have you not?

A. I can't say. I might say one thing and I might say another. I am just as apt to be wrong one way as I am another.

Q. Then you just don't know?

A. No, sir; I don't know.

Q. How far did it extend back west?

A. Well, for several miles. A mile or more. I don't remember how much. I will not say.

Q. It was several miles, a mile or so, now which one of those statements as to distance shall I accept?

A. Either one you wish. I will not say how much. I never measured it to find out, and I don't know, and he never told it to me.

[fol. 121] Q. Now then, Willow Point plantation, owned by your brother in law, the line on the north side run east and west did it?

A. Well, as near as I knew. It was bounded by the Mississippi river.

Q. I say, according to your statement it run east and west?

A. Yes, sir.

Q. It commenced caving on the northeast corner, you say?

A. Well, it caved on the north side of the plantation.

Q. How could it cave off the north side, on the north line running east and west, and the east line facing the Mississippi river?

A. How could it cave off the north side?

Q. If the north side did not touch the river?

A. I said that it was bounded by the river on the north side.

Q. It was bounded by the river on the north, was it?

A. By the north side.

Q. The east side did not touch the river?

A. The east side certainly touched the river.

Q. How could it be bounded on the north by the river if the east side touched it?

A. The river run on the east side and also run on the [fol. 122] north side—on the north side and then around on the east. There was a bar made out there in front where it was bound to get around it.

Q. As I have it, the entire north side was bounded by the Mississippi river, and the river then run around this point and bounded it on the east side, is that it, Mr. Beard?

A. Yes, sir.

Q. Now then, if it commenced caving on the north side it caved off that part of it that was on the north, and you say that it also caved off on the northeast?

A. I don't remember that I ever said that.

Q. Then if you did not say it I am mistaken. Am I mistaken in my understanding of what you said about that?

A. I don't remember of having said it.

Q. Did you tell Judge Dale that it began caving on the northeast corner?

A. I said on the north side of the place.

Q. It did not cave on the northeast corner?

A. I did not say anything about that.

Q. Well, did it?

A. Well, I did not examine that corner of it to see. I did not know there was a corner.

Q. If it was bounded on the north by the Mississippi river, then there was bound to be an east side to it, was [fol. 123] there not?

A. Sure.

Q. All right. Now then, did it commence caving and continue caving on the north side of it, the northeast corner or on the east side?

A. On the north side.

Q. Now, we have it. You don't know anything about the northeast part of it?

A. Except there was a bar on the northeast.

Q. How could it cave on the north side and there be a bar on the northeast corner?

A. Very easy.

Q. It could?

A. Yes, sir.

Q. That's your answer?

A. Yes, sir; I did not know that there was a corner on it at all, a northeast corner. There may have been a northeast corner somewhere, but all over the place there was a sand bar.

Q. When was that caving you refer to?

A. It was caving more or less after that bar was on the north side—a gradual cave.

Q. In other words, it was caving on the north side of the Newman property ever since you can remember?

A. Yes, sir.

[fol. 124] Q. A gradual caving?

A. Yes, sir.

Q. Because the current of the river was directly against that bank?

A. I don't know anything about it being directly against it.

Q. But it was against it?

A. Yes, sir.

Q. And that caving continued, you say, up to what year?

A. Well, as long as I remember the place it was caving on the north side.

Q. And you have been remembering the place for fifty years?

A. Yes, sir.

Q. Where do you live now, Mr. Beard?

A. Well, I am a timber cruiser and I live about at different places, but my home is at Sondheimer.

Q. Where is that?

A. On the M. H. & H. St. L. Railroad in East Carroll Parish.

Q. That is down from Lake Providence, or up above?

A. It is below Lake Providence.

Q. Over towards Tullulah?

A. Yes, sir.

Q. Now, you were born, you say, fifty-nine years ago, and [fol. 125] you have known that place for fifty years. That shows that you knew the place back in about 1876, does it not?

A. I have not figured it exactly, but I will accept your statement.

Q. That is the subtraction?

A. Yes, sir; that is all right.

Q. That would make it in 1876, and it has been caving since that time?

A. Yes, sir.

Q. Now, you have known that place since 1876, and I understood you to tell Judge Dale, and if I am wrong you may correct me, that there was no island in the Mississippi river between Willow Point, or along in there, that you know of? No islands there?

A. I did not see them. I did not see them.

Q. You have never known them to have been in the Mississippi river since 1876?

A. I did not see them.

Q. If they were there you just did not know it and you did not see them?

A. No; I did not see them.

Q. If they had been there you would have seen them, would you?

A. I suppose I would.

[fol. 126] Q. Your eye sight is good yet, is it?

A. Yes, sir; it is very good. I never have to use glasses.

Q. And a timber cruiser has to have good eye sight?

A. Pretty good; yes, sir.

(Witness excused.)

Capt. W. H. Reed, called as a witness on behalf of the complainant, was duly sworn and testified as follows:

Direct examination.

By Mr. Brandon:

Q. State your name and age?
A. W. H. Reed; fifty-four last March.
Q. Where were you born?
A. At Natchez, Mississippi.
Q. In what part of the city were you born?
A. In the northern part, near the Mississippi river.
Q. What was your father's occupation?
A. He was a river man, and rafted. After cottonwood timber because merchantable he was in the lumber business, and would take the cottonwood to New Orleans.
[fol. 127] Q. From the time that you have been able to work at all what has been your occupation?
A. River man, timber man and steamboatman.
Q. Do you hold any official position at the present time?
A. I do.
Q. What is your present position?
A. Sheriff of Adams county, Mississippi. Sheriff and Tax Collector.
Q. You say from the time that you became old enough to work you began rafting timber, and so on?
A. Yes, sir.
Q. State whether or not you are a licensed pilot?
A. I am.
Q. Licensed to pilot where?
A. On the Mississippi river from New Orleans to Greenville, and later on in the tributaries of the Mississippi river.
Q. Do you hold a master's license also?
A. Yes, sir; master and pilot.
Q. How long have you held a pilot's license?
A. Since about 1907 or 1908.
Q. Do you still hold such license?
A. Yes, sir.
[fol. 128] Q. How long have you held a master's license on the Mississippi river?
A. How's that?
Q. How long have you held a master's license?

A. For the same period.

Q. Do you still hold that license?

A. Yes, sir.

Q. On Sheet No. 17 of the Mississippi River Commission map, which is marked Exhibit C to the Complainant's bill of complaint, I direct your attention to a point on said map that is marked "Willow Point, Pecan Grove and Henderson's landing." I want to ask you whether or not you are familiar with the conditions of the shores of the river in the sections indicated by me there?

A. Yes, sir; I am quite familiar with that territory along the Mississippi river there.

Q. How far back does your acquaintance with that stretch of the river date?

A. Back to about 1894.

Q. How did you happen to become acquainted with that stretch of the river in 1894?

A. In 1894 and in the early spring or the latter part of the winter I went with my father and a cousin and we camped on the Henderson property.

Q. What were you doing there?

[fol. 129] A. Gathering drift timber,—drift logs that would flow down the river.

Q. Your father was?

A. Yes, sir; and a cousin of mine. Another Reed. He has passed away now.

Q. Is that your earliest personal knowledge of that portion of the map to which I have called your attention?

A. Yes, sir; that was my first trip that high up. We came to Vicksburg and rowed up there in a skiff.

Q. About what was your age then?

A. In 1894 I was about twenty-four.

Q. Twenty-two—you would be twenty-two?

A. Yes, sir; twenty-two.

Q. Where did you camp?

A. On the Henderson property, just below there.

Q. Just below what point?

A. Just below Henderson's Landing at that time.

Q. Henderson's landing was located where?

A. On the Mississippi River, East Carroll parish.

Q. How long were you camped there?

A. About six weeks at that time—a month or six weeks.

Q. What was you, your father and your cousin doing?

A. Gathering drift timber for a wood yard for the New Orleans market.

Q. State what was the condition of the shore line at that time on the Louisiana side of the river—how long was it [fol. 130] indicated on the map as Willow Point?

A. What is the question?

Q. State what was the character of the shore line along that portion of the river on the Louisiana side?

A. On the Louisiana side?

Q. Yes; opposite what is indicated as Willow Point?

A. Well, at that time when we first went there there was a white sand bar, possibly a mile wide.

Q. It was possibly a mile wide. You mean that it extended out from the shore or up and down the shore?

A. I mean out from the timber line on the shore to the point of the bar.

Q. I understand you to say that in 1894, in front of Willow Point, there was a bare sand bar extending out about a mile from the Louisiana shore?

A. Yes, sir; when we first went there to camp.

Q. Towards what shore did it extend?

A. Towards the Mississippi shore.

Q. In which direction?

A. Northeasterly direction.

Q. When you visited this place in 1894 what was on this bar, this sand bar? I am not referring to the main land, but to the sand bar. Was there any growth of timber of any kind?

A. I don't remember of anything on the bar when we went there except drift timber, outside of the regular timber line.

[fol. 131] Q. When you speak of the regular timber line, what do you mean?

A. I mean the line of timber that went from the Point—from the Point down around the Point just above Henderson's landing at that time there was no timber there at all. Today there is plenty there.

Q. That was along the main shore?

A. Yes, sir; that was along the main shore behind the white sand bar. It then was a white sand bar covered by the river when it backed up against the timber.

Q. The white sand bar was covered—covered with what?

A. Water.

Q. Now, where abouts were you gathering drifting timber on this occasion?

A. Going over the white bar, as the river covered the bar with water, the timber drifted,—wood, logs and so forth with the last fall of the river that came after the rise in the river in 1894.

Q. And as the river rose——

A. (Interposing.) The bar covered.

Q. The bar covered?

A. The drift passed on over, and we would pick out the best stuff and raft it to wood yards and saw mill use.

Q. Did you have occasion to go up to this point at any subsequent time, to this first occasion in 1894?

[fol. 132] A. How's that?

Q. Did you have occasion to go up and down the river in front of this Willow Point subsequent to 1894?

A. Yes, sir.

Q. Did you go there the next year?

By Mr. Henry: We object to that.

By Mr. Brandon:

Q. Go ahead. Answer the question. The objection has been noted, and you may answer the question.

A. I passed up and down the river year after year.

Q. Year after year?

A. Yes, sir.

Q. You have stated, if I understand you corectly, that there was timber along the original main shore line in 1894?

A. Yes, sir.

Q. That same bar extended out, and was bare of timber?

A. Yes, sir.

Q. State whether or not at any time, or subsequent to that, any timber growth appeared?

A. Yes, sir; there was what appeared on the island and

grew on the white sand bar. I did not mean that what appeared was an island: I mean that a tow head appeared on the white sand bar.

Q. Now, was that tow head that you have just referred to in your answer, was it close to or far from the Louisiana shore?

[fol. 133] A. Close to the Louisiana shore.

Q. What was the character of this growth that you say appeared, as I understood you—when you say the main shore line—you mean the main shore line—which main shore line?

A. From Willow Point down to Henderson's landing there was a timber line, and from Willow Point landing down just above Henderson's landing.

Q. That was the main shore?

A. Yes, sir; on the timbered part of the Newman property.

Q. Now, I have reference to the sand bar. You have stated after you first visited there in 1894 that a timber growth appeared on the sand bar?

A. Yes, sir.

Q. And next to which shore? Next to the main land shore was it?

A. It was near the Newman Tow Head on the bar.

Q. What was the character of this timber growth that first appeared?

A. How's that?

Q. What was the kind of trees, those that first appeared?

A. Cottonwood and willow.

Q. Well, did they continue to grow?

A. Yes, sir.

[fol. 134] Q. What was the result of this growth there?

A. Well, it growed on up until it became merchantable,—a part of it, any way.

Q. Where the timber sprung up did the sand bar grow higher or lower? What was the effect of it?

A. The tow head continued to grow in height and size.

Q. It formed a tow head there, did it?

A. Yes, sir.

Q. Now, you stated in response to questions that when you first knew it that this sand bar extended out easterly from the Louisiana shore about a distance of what?

A. A mile.

Q. About a distance of a mile?

A. Yes, sir.

Q. During this time was any change taking place on the northerly—I do not say north, but northerly—side of this Willow Point?

A. What is the question?

Q. Was there anything on the shore line taking place on the northerly side of Willow Point, on the northerly side of the Willow Point property?

A. The extreme northerly side of Willow Point property continued to cave.

[fol. 135] Q. As the caving took place on the northerly side did any change take place on the easterly side of Willow Point?

A. Yes, sir.

Q. What?

A. Willow Point bar continued to grow eastward.

Q. From which shore?

A. From the Louisiana shore.

Q. And towards which shore?

A. Towards Mississippi.

Q. As this bar in which direction did the current of the river turn, which you say had been caving off the extreme northerly part of Willow Point? Which way did the river run from there?

A. Leaving Willow Point Landing, the main channel at that time——

Q. (Interposing.) What year are you talking of now?

A. I went there in 1894 to start with.

By Mr. Henry:

Q. In what year are you talking about with reference to the caving off of the northerly part of Willow Point?

A. Well, I will say from 1900 on I became very well acquainted with the condition of the caving.

Q. You say from 1900?

A. Yes, sir; for at that time it became very prominent.

By Mr. Brandon: I suggest, Judge Henry, that you re-

[fol. 136] serve all that for your cross-examination.

By Mr. Henry: All right then. I was just getting ready to put in an objection inasmuch as you had not designated the year.

By Mr. Brandon: I will bring that out for you then. I thought all understood it.

Q. Now, you have stated that from 1894 the Point continued to extend rapidly eastwardly?

A. Yes, sir.

By Mr. Henry: Let our objection be noted to that.

By Mr. Brandon:

Q. Now state whether or not from 1894 on you had occasion to go up and down the river around this point, and if so, for what years?

A. Well, after I got a license I was on the steamboat then as deck hand, cook and so forth, on that boat, a small tow boat. That was along about 1900, and I became acquainted with the channel along there as a steamboatman.

By Mr. Henry:

Q. In 1900?

A. Yes, sir.

[fol. 137] By Mr. Brandon:

Q. Now, about 1900, how far out from the Louisiana shore towards the Mississippi shore had this accretion of sand bar extended?

A. From my first knowing timber line there it extended back—it had increased about two miles. The bar had gone back a mile from 1894 to 1900.

Q. Extended about two miles?

A. Yes, sir.

Q. State whether or not, if you know, if that bar in subsequent years, continued to grow or whether it became less?

A. It continued to grow.

Q. In what direction?

A. East and northeasterly.

Q. From which shore towards which shore?

A. Northeasterly in 1912.

Q. Were you familiar with the conditions say in 1910 and 1911?

A. Yes, sir.

Q. Did you have occasion to go up the shute in the river?

A. I was towing timber up there.

[fol. 138] Q. Towing timber?

By Mr. Henry: We object to that. You asked him about a chute, and I never heard him say anything about a chute.

By the Master: Very well. Let the objection be noted, and also let the record show that the ruling is reserved.

By Mr. Brandon:

Q. You said towing timber?

A. In 1911, 1912 and 1913 I was towing timber past the Willow Point property or the Newman property.

Q. How far out at that time from the old Louisiana—the main Louisiana old wooded shore had this sand bar and accretions extended in 1911?

A. I think about three and a half miles from the old timber line that was first made in 1894.

Q. Had it extended any further in 1912?

A. Yes, sir.

Q. Now, you have testified that shortly after your first visit to this section of the river in 1894 there was a growth of cottonwood and willow timber that sprung up on the sand bar, near the Louisiana old shore line?

By Mr. Henry: That is not my recollection of his statement in regard to it. He stated that in 1894 was the first [fol. 139] time that he became familiar with the property, or that he was ever up there.

By Mr. Brandon: Yes, sir; but he stated that in the next year or so he was up there again.

Q. How soon after 1894 did you notice what you have testified to and referred to as the tow head and on which cottonwood and willows started near the Louisiana main line?

A. I can't remember the exact year that the tow head started to form, but it became prominent about 1900, so that steamboatmen would know how to direct other pilots, and give them directions as to their course which should be run, and that part of it, Newman's Tow Head, or the tow head there could be taken as a land mark.

Q. As this sand bar extended eastwardly as you have stated, please tell the court whether or not there was any other tow head that sprung up, and if so, where?

A. The Newman tow head was the last one that I know of to spring up and grow on that bar. There was a tow head inside of the timber line.

Q. On what part of the bar was this second tow head that you have referred to as the Newman Tow head located?

A. On the outer part off from the timber line on the Willow Point property, I would say, 150 yards from the old [fol. 140] timber line to the new timber line on the white bar.

Q. Was this second tow head of large or small extent?

A. Well, it had grown until 1912 when it was quite a tow head. As to the number of acres in it, there was quite a few—quite a few—quite a number of acres in it.

Q. Did you have occasion at any time to land on the bar?

A. Yes, sir; at the foot of it.

Q. When?

A. Along in 1900, and from 1900 we would land there with timber and cut some willows off of it for what we call binders—binders we call them, which are used for splices in splicing the logs together, fastening the logs together—fasten a string of logs together.

Q. On which shore of the river was this?

A. It was on the Louisiana shore of the Mississippi river, there at the foot of the island where we would get the slack water.

Q. How far was that from the Newman tow head?

A. On the foot of the tow head.

Q. I will ask you again what was the character of the timber on this accretage, this accretion to the main land on the Louisiana shore, to which you have referred? What was the character of the timber growth?

A. Do you mean on the tow head?

[fol. 141] Q. Yes, sir?

A. Cottonwood and willow.

Q. When you first noticed it what was the size of this timber?

A. When it first became much prominent and I was taking much note of the island, the timber was big enough for splicing poles,—five or six inches, or seven or eight inches. I judge that it was four or five inches all the way through.

By Mr. Henry:

Q. That was willow?

A. Yes, sir; we used that altogether in those days for our splices.

By Mr. Brandon:

Q. Well, what about the cotton wood?

A. The cotton wood was possibly seven or eight inches in diameter.

Q. In what year was that?

A. About 1900.

Q. Do you remember any event that occurred that affected the physical condition of this point about the year of 1912, Captain Reed?

A. I do.

Q. What took place in 1912?

A. The Mississippi river commenced to wash out the depression between this tow head and the main timber line on the Newman property, and it washed it out for [fol. 142] quite an extent that year and made the cut off virtually, but it did not clean it right out until 1913. We steamboatmen continued to use the old channel unless we had very light boats, and we continued to go around the old way in 1913—the remainder of 1912 and in 1913, when it was cut off and it moved the other way and then we used the new channel to run our boats—used the new channel.

Q. That was in the year 1913?

A. Yes, sir; in 1913.

Q. Prior to this cut off of 1913, or 1912,—I beg your pardon, that you have testified to, where did the main channel of the river run with reference to the Newman Tow head?

A. It ran around the easterly side of it between Mississippi and Louisiana. That was Albemarle Bend, and between the Louisiana shore and the Mississippi shore.

Q. What would be the Louisiana shore?

A. The Newman property. The Newman tow head, sand bar and so forth.

Q. Now, on which side of this main channel of the river, what you call Albemarle Ben, was the Newman tow head? On the east or west side?

A. Westerly side according to what is known by steamboatmen—the right hand side of the river.

Q. When you speak of the right hand side of the river, [fol. 143] you speak of the right hand side of the river going down? Going down stream?

A. With the flow of the current; yes, sir.

Q. Prior to this cut off of 1912 nearer to which shore was the thalweg or the main current of the channel of the river in Albemarle Bend?

A. Down the Louisiana shore as far as the lower side of the tow head. The channel was right up against the island and it left there and went over and would strike the Mississippi shore just below Ingomar, above Scruggs' landing, and would sweep down the bend of the main shore, and from there to Chotard. There was a little set off from there, and the channel was then out about one third of the way to the middle of the river on down to Brunswick, and from there back over to Henderson's.

Q. When you say "island" what do you mean?

A. I mean tow head.

Q. Was it an island in 1911?

A. No, sir; it was an island in 1912—a complete island.

Q. Is that the island shown on the map known as Newman's tow head, is that correct?

A. Yes, sir.

Q. Was there an island there before the cut off?

[fol, 144] A. No, sir; it was a tow head on Newman's bar, or Willow Point Bar.

Q. I will ask you this question. Prior to the cut off which you have testified took place in 1912, I will ask you again how far had this accretion of which you have testified, and on which the Newman tow head was located, how far did it extend out from the old original Louisiana shore line to the easterly end of the Point?

A. From what I have told you was the timber line, about three and a half miles.

Q. Did the point extend beyond the timber line of the Newman tow head?

A. Oh yes, sir.

Q. How much beyond the timber line of the tow head did the sand bar still extend prior to the cut off?

A. Up to 1912?

Q. Yes, sir?

A. I guess there was two miles of the white sand bar outside of the white tow head at that time. There was about 500 acres of the tow head. That would be my rough guess at it.

Q. Then, from the water's edge of the tow head, you say it was about two miles from the timber of the tow head, and from the main shore it was about three and a half miles?

A. Well, say from the outer side of the timber on the [fol. 145] tow head in low water it was about two miles. It was about two miles of white bar. That was in extremely low water when all the sand bar was out.

Q. And from the timber line back to the Louisiana shore I understood you to say that it was about three and a half miles?

A. I will say from the timberline back to the back of Newman's property was a mile and a half, making five miles in all.

Q. Five miles in all?

A. Yes, sir.

Q. Now, before this cut off state whether or not there was any channel in the ordinary stages of the water in the Mississippi river anywhere between across this point between the extreme eastern end thereof and the Louisiana shore?

A. Between the tow head and the old timber line there was a depression of white sand, and I think in extremely high water some very small boats navigated that island or depression.

Q. What do you call a depression?

A. Low place.

Q. Was it connected with the main land?

A. Was what connected with the main line?

[fol. 146] Q. I will withdraw that question and ask another one. State whether or not Prior to the cut off of 1912 in the ordinary stages of the Mississippi river, there was or not in the ordinary stages of the Mississippi river there was not, a continuous stretch of land from the sand bar from Louisiana main land to the extreme easterly end of what you have testified as the Newman's Tow head?

A. Continuous timber?

Q. No; I am asking about land. I am not asking about timber.

A. Yes, sir; at all times except high water there was a continuous stretch of land for about five miles wide. That is, up to 1912—up to the spring time of 1912.

Q. After the cut off of 1912 did any changes take place in the main channel of the Mississippi river?

A. In the old channel?

Q. Yes, sir; and if so, what?

A. Yes, sir; it began to fill up.

Q. Where did it begin to fill up?

A. At the head of the island. At the head of Newman's tow head.

Q. Was there an island there before 1912?

A. No, sir.

Q. When you speak of it as an island you mean at 1912 when the cut off occurred?

A. Yes, sir.

[fol. 147] Q. Now, after the two head was cut off, and as you said made an island out of it by cutting it off by the river you say that it began to fill up at the end, at the head of the tow head—Newman's tow head?

A. Yes, sir.

Q. After the time of the cut off in 1912 state if you know whether or not Newman tow head continued to grow, or to the contrary?

A. It continued to grow.

Q. In which direction?

A. Easterly, and the timber growth was easterly.

Q. After this cut off?

A. Just a minute. I would like to say easterly and southeasterly.

Q. Easterly and southeasterly?

A. Yes, sir.

Q. For how long after this cut off of 1912 were steamboats able to go up and down that portion of the river that you have designated as Albemarle Bend?

A. Well, about four years. In 1916 it built so high at the head of the tow head that a little boat could not pass through there at any stage. Small boats did not go through. There was a little lake in there but they could not go through. Packet boats did go in there but they came out

and went around because they could not get entirely through

[fol. 148] After this cust off against which shore was the channel of the old, the deepest part of the channel of the old river against which you call Newman's tow head or against the main shore?

A. Immediately after the cut off?

Q. Yes, sir?

A. Over to the main shore of Albemarle Bend.

Q. That was the deepest part?

A. Yes, sir; the last gut that came in, the extreme lower end, between the foot of the two head and Chotard Landing, right up against the Chotard shore, of the Albemarle Bend shore.

Q. Captain have you been on the Newman tow head recently?

A. Yes, sir.

Q. How recently?

A. In September, 1926, this year.

Q. Do you know what the character of the timber is on the Newman tow head now?

A. Yes, sir.

Q. What?

A. Cottonwood and willow.

Q. What about the size of the cottonwood at this time, Captain Reed?

The largest cottonwood there, breast high, would not be over thirty inches outside the bark.

[fol. 149] Q. Willow?

A. About 24 inches breast high outside the bark.

Q. Outside the bark?

A. Yes, sir; and a little over 22 inches inside.

Q. Any old original timber on the Newman tow head?

A. None of no kind. None of any kind.

Q. None of any kind?

A. No, sir; nothing on the island but second growth timber, cottonwood and willow.

Q. You have stated that after the cut off began in the upper end of Albemarle Bend, the bend began to fill up with alluvium. To which shore did most of these accretions that came after the cut off attach itself?

A. To the Newman tow head.

Q. You may have stated, but in order to get it clear, I will ask you how frequently from 1897, when you began steamboating, down to 1912, you had occasion to go up and down the Mississippi river through Albemarle Bend? About how often?

A. I don't think I missed traveling the river up there a year. I think I made it at least once a year, and at other times several times a year. I towed timber all up and down there.

Q. And in making these trips up and down the river in what capacity were you acting on the boat?

A. I was captain and pilot on a small tow boat, towing timber.

[fol. 150] Q. In the proper discharge of your duties as master and pilot state whether or not it was necessary or not for you to observe the shore on either side of the river as you went up and down?

A. Sure; a steamboatman has got to keep himself posted on the condition of the bank so he will know where is places that he can tie up, the course to be run, sand bars and so forth, and to keep posted on all changes that take place in the river on either side of the river. All those things are kept in mind by steamboatmen because he don't know at what time he will be or might be caught in the storm and have to tie up.

Q. State whether or not Albemarle Bend was the main channel of the river from 1897 till 1912?

A. Yes, sir.

Q. State whether or not if you know between the dates that you have testified, 1897 to 1912, there were any islands in the Mississippi River in Albemarle Bend between Newman's tow head and the Mississippi main land, the old original main land?

A. No, sir; nothing but a cavement of Albemarle Bend shore throughout the bend.

Q. What about the caving of the Albemarle shore?

A. It was a very rapidly caving bend.

Q. On which shore?

A. On the easterly shore, or the Mississippi shore.

Q. At that time what was the character of the banks along the Mississippi side of the shore?

[fol. 151] A. Until the government commenced to revet there it was very bad, a very bad caving bend. The bend was so bad that it was almost straight down.

Q. You said that the government was revetting there. When did the government begin revetting?

A. I think in the low water of 1910, and then where they revetted, of course it stopped caving.

Q. What was the purpose of revetting?

A. To save the bank there and the levee. It was getting near the levee. In fact, the levee began to cave in and kept caving in and they moved it back by looping. It would make another cave and they would make another loop and except where the government revetted it was going in by the acre, up until the day of the cut off. As soon as the cut off occurred in 1912 the current slackened in the Bend.

Cross-examination.

By Mr. Henry:

Q. Captain, your knowledge of the Mississippi river at the point in controversy dates back from 1894?

A. Yes, sir.

Q. And you were logging on that bar which you say projected from Willow Point?

A. Yes, sir.

Q. Louisiana?

[fol. 152] A. Yes, sir.

Q. That was just one trip that you made up there, as I understand it, with your father?

A. Yes, sir; one trip for that year.

Q. Well, you say, as I understand you, that you began steamboating, as I have it down here, about 1900?

A. Yes, sir.

Q. So there was six years——

A. (Interposing.) Steamboating up in there.

Q. So there was six years between?

A. Yes, sir.

Q. That is right, is it?

A. Yes, sir.

Q. That is what I want to find out.

A. Yes, sir; that is right.

Q. Now, at the time that you were steamboating in 1900 you were deck hand and cook?

A. Yes, sir; and studying the river.

Q. You did not say anything about that when you were being examined?

A. Yes, sir.

Q. You said that you were a deck hand and cook.

A. Do you want to know what it was that I said on my direct examination?

[fol. 153] Q. Just permit me to ask you the questions and we will get along faster. You said that you were deck hand and cook on that boat?

A. Yes, sir.

Q. Now, knowing something about steamboating myself, having been on the river all of my life, a cook on a tow boat is a pretty busy man, isn't he?

A. Well, yes, sir, a man on a boat that does his duty is a busy man.

Q. And the cook is a busy man?

A. Yes, sir; but not necessarily the cook.

Q. How many men did you have to feed on that boat, Captain?

A. There were five or six of us generally. Sometimes six, including the cook.

Q. Including the cook?

A. Yes, sir.

Q. Isn't that a mighty small crew?

A. Yes, sir.

Q. Then you didn't run at night, did you?

A. Sometimes we did. I am not now before the local inspector.

Q. Well, I have been before them.

A. But I say that I am not now?

Q. Well, I'll report you.

A. I guess then that I will plead guilty.

[fol. 154] Q. A single crew, of course, might sometimes run at night, but I don't suppose you ran very much at night on that boat, did you?

A. No, sir; not often, but sometimes we ran at night. Thirteen hours is a steamboat day.

Q. I know it is, from 12 to 13. Captain, as a deck hand you had to keep the ropes going and were busy with other things, just as a deck hand is?

A. Sometimes we carried an extra man, a regular deck hand and sometimes we had two firemen and the extra fireman would help the cook and deck hand.

Q. After thinking about it a little don't you think now that you had more than five men on that boat for all of those purposes?

A. No, sir; five or six, and no more. No more than six. That was enough for that size boat. It was five ton displacement, although we did handle a half million feet at a tow at times, and of course, a man had to be always on his guard to do that.

Q. Sure, a man was bound to be on his guard, and your duty at that time was to watch the timber. Every man on board had to be on guard, and you had to look after the directions that were given you, and help the captain or the pilot, and look after the lines that were out there to hold the timber. Was that timber towed in the river or on a barge?

[fol. 155] A. Towed in the river, shoved by the boat. There would be men on the raft and——

Q. Well, I don't care about that. How long did you cook and act as deck hand?

A. How long?

Q. Yes, sir.

A. Until about—I can't remember when the boat was turned over to me. I was cook*ed* and was deck hand for a year — so after I got a license,—possibly three years.

Q. You were cook and deck hand until you got a license?

A. Yes, sir.

Q. When did you get your license? You were licensed when, Captain?

A. In 1897 about.

Q. In 1897?

A. I was twenty-four year o*lf* when I got my license.

Q. So you were cook and deck hand then for seven years?

A. From 1897 to 1900.

Q. That is three years?

A. Yes, sir.

Q. You said in 1900 you were cook. That is the way that I have it down here.

A. The boat was turned over to me in about 1900.

Q. Now then, in 1900 you say the boat was turned over [fol. 156] to you?

A. About 1900.

Q. About 1901, 1902 or 1903?

A. About 1900. Capt. Bland was the captain ahead of me, and while he was captain it was studying, working up to that point. Studying to be a pilot.

Q. You were a "cub?"

A. Yes, sir; a "cub" pilot.

Q. Now, when was the first time that you saw the property in question after you took charge—when did you say?

A. In 1900?

Q. Yes, sir.

A. It was along in the spring of that year.

Q. Of that year?

A. Yes, sir.

Q. Now, for whom were you towing logs?

A. R. F. Learned. R. F. Learned & Son, Natchez, Mississippi.

Q. And you were towing logs from Pittman Island, that was above this point?

A. Yes, sir; but I don't know whether we got them from that particular point in that year or not,—in 1900.

Q. How often did you go up there in 1900?

A. Six or eight times.

Q. Six or eight times?

[fol. 157] A. Six or eight times during high water.

Q. Six or eight times during the high water period?

A. Yes, sir; while the water was up.

Q. Pretty often, wasn't it?

A. Every three or four weeks maybe we would make a trip up.

Q. When did you go back again?

A. Well, every year I passed there.

Q. You would go up year after year and pass it?

A. Yes, sir.

Q. Pass this point?

A. Yes, sir.

Q. Now Captain, this first tow head that you described that appeared on the bar that you say formed out from Willow Point, that was only a short distance from the timber line?

A. That was the second tow head on the bar, the first one was joined there in my recollection.

Q. That was the first one joined there in your recollection?

A. Yes, sir; there were two depressions across there.

Q. When you went up there in 1900 you remember the tow head on the bar at that time?

A. Yes, sir.

Q. Where was that tow head?

[fol. 158] A. There was a prominent tow head right about 150 yards from the timber line.

Q. As I understand, what you mean by the timber line is of course the bar is down in the river and the timber line is up on the bank?

A. It is not necessarily much higher.

Q. I don't know that it is much higher, but it is up on the bank, whatever it is, I don't care whether it is two feet or four feet?

A. Sure. It is not in the water. It is on the bank.

Q. That is what you mean by timber line of property along the Mississippi River?

A. Yes, sir; it is timber growing on the bank.

Q. And this tow head that you say was there when you first went up there was about 150 yards—when did you say that was?

A. I said in 1900.

Q. That far from the timber line?

A. Yes, sir; 150 yards.

Q. Now then, you say that there was another tow head formed?

A. There was a tow head in the old timber line, as I started to say—another depression between that and the timber back there.

Q. I want to locate the second tow head to which you refer?

[fol. 159] A. The second tow head it was about 150 yards from the timber line on the bank as you see there. I say about 150 yards east on the bar of the timber line.

Q. How far was the first tow head then?

A. It was in the line of the timber.

Q. In the line of the timber?

A. Yes, sir.

Q. So you have the two tow heads. Now, the first one which was formed was in the line of timber in the main bank?

A. Yes, sir.

Q. And the second one was about 150 yards——

A. Eastward.

Q. Eastward from the timber line on the bar?

A. Yes, sir; the first tow head being in the timber line with a depression between that and the timber line and some timber behind it.

Q. Now, at that time, Captain, tell the court how far this tow head No. 2, we will call it, was from the Mississippi shore?

A. I would say about, the Mississippi shore line of Mississippi was about two miles and a half, probably. Two and a half I will say.

Q. Easily two and a half?

A. About two and a half.

[fol. 160] Q. Two and a half miles?

A. Yes, sir.

Q. Now then, as the river continued to——

A. (Interposing.) Beg, pardon, Judge, if you will allow me—from the shore line of the Bend. It was not from the main shore line. The Tennessee bar extended down.

Q. I am not talking about the Tennessee bar, but from the shore line of the Bend.

A. From there I will say two and a half miles.

Q. Two and a half miles?

A. Yes, sir.

Q. Now then, did the river continue in its course and continue to cave out what you have designated as Albemarle Bend?

A. Yes, sir.

Q. And it would place the tow head further from the Mississippi shore as it continued to cave?

A. The Mississippi bend tow head.

Q. The bar commenced at Tennessee Landing, the sand bar?

A. Yes, sir; several miles above this property. Tennessee bar came down in front of——

Q. Wait, and I will get to that, Captain. Tennessee bar,—or Tennessee Landing, there where the bar had its

interception, that was about two miles above Willow Point on the Mississippi side, wasn't it?

[fol. 161] A. Yes, sir; Tennessee Bar Landing was. Tennessee Landing was behind the bar.

Q. Behind the bar?

A. Yes, sir.

Q. Now then, that Tennessee bar was not affected by the cutting in on Albemarle Bend was it?

A. No, sir.

Q. Now, what do you know of the caving of Willow Point?

A. On the extreme northerly shore or the Bend shore Willow Point was at the foot of the caving bend or reach, a straight force of the river up towards Salem. From Salem down past Willow Point Landing and on down to the head of Newman's tow head, it was caving in low water.

Q. Now, when did the caving start?

A. Ever since I have known it it has been caving.

Q. Then, you have known it since 1900?

A. Yes, sir.

Q. And it was caving in 1900?

A. Yes, sir.

Q. And continued to cave?

A. Yes, sir.

Q. Now, this caving project at Willow Point, that had the effect of changing the current that much lower down on the Mississippi shore did it?

A. Yes, sir; the bar built down. The Tennessee bar [fol. 162] filled down.

Q. It was bound to be down?

A. Yes, sir.

Q. Because the caving was against the northern bank as you say, and the caving had been going on ever since you could remember it?

A. Yes, sir.

Q. That would throw the current lower down the river would it?

A. Yes, sir.

Q. Now then, Captain, at the time that the current came by the Willow Point as you saw it caving, and since you remember it, the current was thrown lower down,—lower down on the Mississippi shore, and that left the Tennessee

bar up above there did it, and gave it a tendency to also increase,—go down further and further?

A. How is that?

Q. Well, you say the Tennessee bar is across the river now?

A. Yes, sir.

Q. And it is extending down the river, is it?

A. It is trailing down in front of the property.

Q. Down in front of the Foster property?

A. Foster?

Q. Yes, sir?

A. On which side of the river?

[fol. 163] Q. The Mississippi side.

A. The Tennessee bar was lower at the start.

Q. And went on down below it, and that went on down in the direction of Ingomar, did it?

A. Yes, sir; it filled down in the direction of Ingomar.

Q. Now, what distance do you put tow head No. 2 to the Mississippi shore where the Tennessee bar was?

A. About three quarters of an mile across the foot of the bar?

Q. Across the foot of the bar?

A. Of the tail of the Tennessee bar.

Q. About three quarters of a mile only?

A. Yes, sir; that is, in a northerly direction.

Q. I know it is.

A. Northwesterly direction.

Q. But it took in the distance some of this bar which you said formed the front of Willow Point?

A. Took some of it.

Q. Yes, sir; you have got to go across some of it to get to that Tennessee bar, or are you saying that the Mississippi river there between the two bars was three quarters of a mile?

A. Before it got down really——

Q. (Interposing.) I am not talking about that. I am [fol. 164] talking about from tow head No. 2 which you said came there after you got there.

A. I can't answer the question, Judge, unless you give me a chance.

Q. I know.

A. Well, ask your question then.

Q. The question I asked you was the distance of tow head No. 2 which you said came there after you knew the river up there, and what the distance from that tow head was over to the Tennessee bar as it then existed and laid and continued to extend down the river?

A. In low water about three quarters of a mile.

Q. In ordinary water how far?

A. In ordinary water all of the Tennessee bar was covered, in that neighborhood. About half the river.

Q. In other words, that low bar was just like part of this tow head you spoke of?

A. Yes, sir.

Q. Of course, it got started low and got filled up?

A. Yes, sir.

Q. And it was about three quarters of a mile?

A. Yes, sir; in low water.

Q. Now, do you recall the house at Willow Point which was occupied by Mr. Newman?

A. I don't remember any residence. I remember some houses around there.

[fol. 165] Q. Don't you remember the old residence, a big house there at the Point?

A. There was one there used as a landing mark.

Q. Did you know one there outside of the levee?

A. I knew of one outside the levee, but I did not know it was a residence. It was a camp in the winter time,—not a residence.

Q. What became of the residence?

A. I don't know what became of the residence.

Q. Suppose that there has been some testimony here about it caving in the river, do you know anything about that?

A. It could have done that.

Q. Well, if so, why would you not have known it?

A. I was not there, possibly, at the caving.

Q. Certainly, but you say you are a pilot, and you have got to know all of the land marks and everything like that?

A. Yes, sir.

Q. You have to know those things as you go along up the river?

A. Yes, sir.

Q. You knew that there was caving there on that bank, did you?

A. Yes, sir.

[fol. 166] Q. I believe you testified about the caving?

A. Yes, sir.

Q. It has been caving ever since you knew it?

A. Yes, sir.

Q. And it has been caving until it took this house which sat in about 150 yards outside the levee?

A. No.

Q. You never knew it?

A. I never knew it as a residence; no.

Q. But do you say that you didn't know that it happened?

A. I knew there was a caving bank.

Q. Tell the court whether or not you knew, as a matter of fact, that the Newman house caved into the river?

A. No; I didn't know it.

Q. You never heard of it, did you?

A. I heard of Newman's house; yes, sir.

Q. What became of it?

A. I don't know.

Q. You don't know?

A. No, sir; I can tell you what might have happened to it.

Q. I don't think we want any prognostication or guessing.

A. All right, Judge.

[fol. 167] Q. Now, are you familiar with the Mississippi River,—the islands in the Mississippi river from New Orleans to Greenville?

A. Yes, sir; more especially from Vicksburg to Greenville, or from Natchez to Greenville, I will say.

Q. Then, you were, of course, acquainted with Island No. 98 were you?

A. No. 98?

Q. Yes, sir?

A. No, sir.

Q. You know that the islands in the Mississippi river were sometime ago surveyed and charted by the United States Government, beginning up about Cairo, and coming on down, and numbered, don't you?

A. Yes, sir.

Q. Have you ever heard of Tullos Island?

A. I have heard of it.

Q. Have you ever seen it?

A. No, sir.

Q. You don't know anything about it?

A. I know what became of it—where they said it was—where the map shows it was.

Q. You have seen the maps have you?

A. Sure, I have studied the maps while I was studying the river.

[fols. 168 & 169] Q. You have studied the maps of the river? You have been studying the maps ever since this law suit begun, have you, Captain?

A. I may have looked at the maps.

Q. That is all right, though.

A. I am a map fiend. I like to study maps.

Q. When have you studied the map with reference to Tow Head No. 2, Newman's tow head, which we have been talking about here, and when did you study the map in reference to where they claim the tow head is today in regard to where Tullos Island is?

A. Studied in what regard?

Q. To show that it was the same position right today where Tullos Island was?

A. Yes, sir.

Q. Don't you know that it is in the same position where Tullos Island was when it existed?

A. Some of it is I think over in the plantation.

Q. Absolutely on it is it, and the map here shows it?

A. Part of it is—I will not say on it.

Q. In other words, that tow head which is claimed is a little larger than where Tullow Island was?

A. I don't know just what acreage Tullos Island was.

[fol. 170] Q. What's the acreage of the tow head?

A. Why, there was something like several hundred acres, 1,800 or 2,000 acres. There is that much in the entire tow head today.

Q. Now, you know where Tullos Island was, and you know where Newman's tow head is now on account of the fact of the big timber on it?

A. Big timber?

Q. Yes, sir?

A. There is no big timber on it.

Q. Not even today?

A. No, sir.

Q. What do you call big timber?

A. I mean timber over thirty inches in diameter, breast high.

Q. In diameter?

A. Yes, sir.

Q. Don't you know that right there where Tullos Island is today——

A. Tullos Island does not exist.

Q. Don't you know that on Tullos Island today there are cottonwood trees which will measure, as you say, thirty inches in diameter?

A. Not on Tullos Island; no, sir.

Q. On the tow h*e*ad—Newman's tow head, and that's [fol. 171] the reason that you recognize it?

A. Because I knew it was Newman's tow head.

Q. I say, on account of the timber on it?

A. I recognize it as being land and timber.

Q. You recognize it on account of being big timber. You said that there was no big timber, but I asked you——

A. (Interposing.) None over thirty inches in diameter. That is not big timber.

Q. No; not the way you fellows cut and slash it around. That is all I care to ask. I think my associates may want to ask him a question or two.

By Mr. Creekmore:

Q. You say, Captain, you were over on that tow head in September?

A. Yes, sir.

Q. At what point did you land?

A. I landed about the foot of the bar that came down the west side of the tow head where you get in there, just below the shanty on the bar, about 100 yards.

Q. There is a cabin up there just above the willows on the bank and you landed up there just about 100 yards above that cabin?

A. Landed about 100 yards below that cabin.

Q. That's where you landed?

A. Yes, sir.

[fol. 172] Q. When you got on the tow head or island where did you go from that point?

A. One time I went straight across from where we landed there on the Mississippi side. That was in December, December, 1912. That was a part of the tow head in 1912.

Q. In other words you went east?

A. Yes, sir; about east.

Q. All right, did you go north?

A. We went up quite a distance and came back. A rain came up that evening and rained us out, and in the next day or two I went back on the land in about the same place—landed in about the same place and walked up the bank until we struck a trail or a path and went up just above the shanty and clear across to what was the edge of the old river, got over there to the old shore, what I judged to be the old shore, about the shore — 1912. That was not the edge of the bar but the edge of the timber. I went back through the timber away and on back out and in the end came up to a place away up there with a wire fence around it, and along back down the shanty and on down.

Q. Who was with you?

A. My father, Louis E. Reed, who had charge of the boat.

Q. For what purpose did you visit the island?

[fol. 173] A. To see what the conditions were there, the size of the timber and how much *and how much* growth there was there since I was there before.

Q. With a view of testifying in this case?

A. Yes, sir; to get it in my mind.

Q. And you made your investigation having this litigation in mind?

A. Yes, sir.

Q. Now, Captain, tell me what a tow head is?

A. What a which?

Q. A tow head?

A. A tow head is a formation of land on a sand bar, where the bar forms first, and sometimes—do you want me to tell how it forms?

Q. I want to get a distinction in my mind between a sand bar and a tow head?

A. A sand bar is a white bar that grows out from the main shore, and then the tow head forms on top of that bar.

Q. A tow head is higher than a sand bar?

A. Yes, sir.

Q. Does anything grow on the sand bar?

A. Not unless there is soil; no, sir.

Q. And then it becomes a sand bar as—it becomes a tow head when the soil gets there?

A. It depends on the conditions, the way it forms, and so forth.

[fol. 174] Q. What grows on a tow head?

A. Cottonwood and willows, generally.

Q. Anything else?

A. Sometimes hardwood—scrubby stuff. It depends on the conditions.

Q. Now, when you went to the island I believe you said that you found no timber except cottonwood and willow?

A. Growing; yes, sir.

Q. The willow was down next to the water on the low land?

A. The willows generally grow on the low land and the cottonwood on the ridges—on ridge land.

Q. On the high land was the cottonwood?

A. Yes, sir.

Q. Right up there by the land near the cabin there when you went up that path you spoke of there was a marked bank of about ten or twelve feet high between the cottonwood growth and the level where the willows were growing, was there not?

A. No, no; not necessarily between the willows and cottonwood.

Q. Where was the cottonwood? Did not the cottonwood predominate on the bank some ten or twelve feet higher than the ground on which the willows predominated?

A. Not only a few feet.

Q. Right at this cabin?

[fol. 175] A. There was a little bank there and a new deposit there in front of the cabin and some willows there.

Q. The bank there was some ten or twelve feet high, wasn't it?

A. Yes, sir.

Q. Now, the cottonwood up on top of that bank, the sand and soil had been washed away from the roots by the caving or by the waves, had it not?

A. Immediately on the edge of the bank.

Q. Certainly, right along there where the path ran. Those cottonwoods along there are from eighteen to 30 inches in diameter, are they,—lots of them?

A. Not in that neighborhood. I did not find anything outside of thirty inches outside of the bark. The biggest I found would be twenty-four inches outside the bark.

Q. Trees there twenty-four inches?

A. Yes, sir.

Q. Now, at the time that you first saw this point which I believe you said was in 1894, I believe you said that the tow head came out to the point where the cabin was standing, or now standing?

A. In 1894 I don't remember whether the tow head was on that bar.

Q. All right, how early did the tow head then get out to the point where the cabin is now standing?

A. The first time that I noticed that it had become promi-
[fol. 176] nent was in 1900.

Q. About twenty-six years ago?

A. Yes, sir.

Q. And was there a growth or not then sprung up on it—the timber growth at this point?

A. It had got big enough to be prominent timber on the bar.

Q. How high was the timber at that time?

A. I judge that some was thirty-five or forty feet high.

Q. How high was that above the surface of the water?

A. You would have to tell me what the stage of the river was.

Q. Well, in the ordinary stage?

A. The tow head was about as high as the main land over next to where I told you I saw the old house. The tow head was just about as high as the main land.

Q. On the Louisiana side?

A. Yes, sir.

Q. That was the condition in 1900?

A. Yes, sir.

Q. Now, what is the elevation of this tow head now?

A. It about keeps pace with the main shore.

Q. About the same?

A. Yes, sir; on top of the tow head.

Q. As you go back now along the tow head up towards the head of it, the elevation perceptibly and rather rapidly [fol. 177] increases, does it?

A. No, sir; if there was any elevation at all I did not notice it. The highest part of the island is next to the chute today, and the biggest timber is next to the cut off.

Q. Is all of that tow head covered with timber today?

A. Virtually all; yes, sir, except between the head of the tow head and the tail of the Tennessee bar, and there is an old field in there, and on which there is nothing grown up in timber,—no timber at all. But on around up next to the shore it is grown up in willows and cottonwood.

Q. Back on the north side of this tow head there is several hundred acres of open land, and some of it is covered with Bermuda grass as much as half a leg high?

A. In the north end.

Q. North central part of the island?

A. No; there is a Bermuda field in there around on the northeast corner which is right up close to the river. There is a Bermuda patch in there.

Q. Any timber on that?

A. I don't think it is timbered.

Q. Timber did not just spring up there?

A. No; it is all a sand deposit there, and it is of such a mixture that there is very little vegatable stuff on it, and just this scrub grass growing up on it.

Q. It takes pretty good soil to get Bermuda grass a [fol. 178] half a leg high?

A. I don't know that it does. All of these sand bars have Bermuda grass on them.

Q. Is there any timber there other than cottonwood and willow?

A. No merchantable timber. Not what you would call a tree.

Q. Is there any poplar there?

A. Poplar does not grow in that land.

Q. I asked you if any poplar grew on the island?

A. No, sir.

Q. Not a tree?

A. Not that I know of; no, sir.

Q. Any ironwood?

A. There may be some ironwood bushes. I don't know of any trees, that is, any merchantable timber except cottonwood and willow, today—not a tree that is merchantable.

Q. You say you are a map fiend. Have you examined this map showing Tullos Island?

A. Not very closely. I just looked over it while others were looking on.

Q. You have examined it closely enough to know that Tullos Island, as shown on this map, occupies at least the same position as the tow head that we have been talking about occupies?

A. I will say that it does on the map; yes, sir.

[fol. 179] Q. I am speaking about the map. It shows Tullos Island as at the same place as the tow head is today?

A. To my mind it shows the foot of the island, the southeasterly part of the island possibly. Here is where you call Tullos Island was. Right now on the map what you call Tullos Island, and there is no timber back in here.

Q. It shows Tullos Island now on the west side of the main channel?

A. Yes, sir.

Q. Here is where the island is today, is it not?

A. Yes, sir.

Q. Now, how much of the tow head occupies the land that was formerly occupied by Tullos Island?

A. I don't know. I have not viewed it that close.

Q. As a matter of fact, Captain, the map shows the elevation of Tullos Island, does it?

A. I don't remember about that.

Q. You don't remember about that?

A. No, sir.

Q. Do you know what the relative elevations are on the tow head?

A. No, sir.

Q. You are sheriff and tax collector in your county?

A. Adams county; yes, sir.

Q. Of course, you are familiar with land numbers, sections and townships and so forth?

[fol. 180] A. Yes, sir; to some extent. The same as an ordinary sheriff.

Q. I hand you, Captain, a map of a survey made in November, 1823, of township 9, range 8 west of the Choctaw

District, made by the Government, showing an island here, Tullos Island. Now, that shows Tullos Island is in what Section, Captain? Twenty and twenty-one?

A. Section 29 isn't it?

Q. Down here a little in Section 30 isn't it?

A. Yes, sir; I suppose that is the number.

Q. Now, let us look at the map of 1823—I mean the chart made in 1913-15, Chart No. 47, which shows Newman tow head?

A. Yes, sir.

Q. Tell us what sections Newman tow head is in? Here is the county line here. What sections is the Newman Tow Head in?

A. Do you want to take that island in?

Q. It takes in a fractional part of 17, 16, 15, 22, 21 a part of 20 and a part of 28 and a portion of 29?

A. Yes, sir.

Q. Now, as to 29, Newman tow head before the cut off included all of this in 29 west of the present channel, did it?

A. Newman tow head did not; no, sir.

Q. Wasn't this once a part of Newman's tow head?

[fol. 181] A. No; that was a part of the Newman property, but the tow head was out on the bar. The tow head was higher south of here. This in here is sand, through here.

Q. The patch of water shown on the map west of the present channel, was that the old channel?

A. That is the depression through the property the same as this was. This is white sand except in overflow or flood stage. It is wet through here and especially dry here at this place. This is the higest part of it today.

Q. So the map shows Tullos Island, in part, covers the same territory as the Newman Tow Head?

A. Newman tow head covers a part where the island was; yes, sir.

Q. Well, either way, I don't care which way you put it.

A. Yes, sir.

Q. The timbered part of Newman's tow head is the part that is shown as the one having been Tullos Island?

A. Is shown on Tullos Island?

Q. Yes, sir?

A. Yes, sir.

Q. That is where the timber now is on Newman's Tow Head?

A. Yes, sir.

(Witness excused.)

[fol. 182] Recess until 2 o'clock p. m.

At 2 o'clock p. m. met pursuant to the above adjournment, and the introduction of testimony by the complainant is resumed. All parties present as of this morning.

By Mr. Dale: Complainant now offers in evidence Exhibits A, B, C, D, E, F, G, H, I, J, K, and L attached to the original bill of complaint.

Capt. CHARLES H. WEST, called as a witness on behalf of the complainant, was sworn and testified as follows:

Direct examination.

By Mr. Dale:

Q. You are Capt. Charles H. West?

A. Yes, sir.

Q. What is your occupation?

A. Civil engineer.

[fol. 183] Q. Do you hold any official position at the present time?

A. I am a member of the Mississippi River Commission.

Q. How long have you been a member of the Mississippi River Commission?

A. Nearly seventeen years. I was appointed in January, 1910 by President Taft, and I took the oath of office on February 5 of 1910, so my membership dates from the oath of office, which was February 5, 1910.

Q. Prior to February 5, 1910, did you hold any public office or position?

A. Yes, sir; I have been an engineer for forty-two years. I am a graduate of the University of Illinois, of the class of 1884. I hold the degree of that class of B. S. in C. E.,

Bachelor of Science Civil Engineers, of the class of 1884. I began the practice of Engineering immediately after leaving the University and have been in the continuous practice ever since, or for about forty-two years. My first experience after graduation was on the Mississippi river in various subordinate capacities. Sometimes in the employ of the United States; sometimes in the employ of the Mississippi Levee District and sometimes doing private work—anything that I was called upon to do, until 1892, when I was appointed as a subordinate engineer, inspector surveyor and superintendent of construction with the [fol. 184] United States Engineers. I was stationed sometime after that period, 1882, in Mississippi and sometimes in Arkansas, being in the two States continuously until August, 1898, at which time I was appointed chief engineer of the Mississippi Levee District. Being a little uncertain as to the position that I was appointed to, whether it was political or not, I asked for a leave of absence for twelve months, without pay, that I might take the position of chief engineer of the Mississippi Levee District, it being understood that if I returned to the service——

Q. (Interposing.) I don't think that is necessary to go into that detail. I will ask you, Captain, if your connection with the Mississippi Levee District embraced in territory now Willow Point, or opposite Willow Point? Did it cover the territory in the Mississippi river opposite the property now in litigation—the point now in litigation?

A. It covered all of the Mississippi side of the river from the Bolivar county line, wrich is some fifteen or twenty miles north of the mouth of White River, down to what is known as Eagle Lake in Warren county. It did at that time. The levee ended at Eagle Lake in Warren county.

Q. Would *would* that cover the territory in Mississippi opposite Willow Point in Louisiana?

A. Yes, sir; it extends several miles south of Willow Point and Albemarle Bend, into the next bend below that, [fol. 185] I can't remember the exact miles, but if you will let me see the chart I will give you the exact number of miles.

Q. I don't care about that. Approximately about how far?

A. I would say twelve or fifteen miles. That is just an estimate, but I can give it to you exact from the chart, as they are all measured.

Q. I now show you a map which counsel for the complainant has marked Exhibit M, and I will ask you, Captain West, to state what that may represents—shows—and how it is made?

A. The map referred to is a chart, No. 45, of the Mississippi River Commission survey of the Mississippi River, made in 1882, upon which has been projected the township and section lines in Mississippi and in Louisiana, of the Government Land Survey in Mississippi of 1823, and in Louisiana in 1824. The township and section lines are projected vertically upon the Mississippi River Commission map or chart of that section of the river.

Q. Now, Captain West, is this all shown on one map or is it shown on more than one map?

A. This is the Willow Point there in Louisiana and Albemarle Bend opposite in Mississippi, of the territory in question, as shown on the Mississippi River Commission Chart No. 45 of the survey of 1882. In order to show the river [fol. 186] south of that territory which has any bearing upon the matter in question, the Mississippi River Commission Chart No. 46, instead of being two separate sheets, have been put together with one sheet, showing that which was reached by both charts Nos. 45 and 46, and therefore the township and section lines in Mississippi and Louisiana of the original land surveys of 1823, in Mississippi, and 1924 in Louisiana, are extended on down so the two charts combined show, not only Willow Point and Albemarle Bend, but show the territory for several miles south of there along the Mississippi river, taking in what was originally Eagle Bend.

Q. Did you say Eagle Bend?

A. Yes, sir.

By Mr. Dale: Now then the complainant offers to file in evidence the map marked Complainant's Exhibit M.

By Mr. Sharp: The defendant desires to interpose an objection to the introduction of the map because it is alleged or supposed to be based or drawn from the original field notes, and the field notes are the best evidence. This itself can be merely secondary evidence.

We object to it for the further reason that the map is not authentic any way—not in any way. It is not authenticated in any way to show the authority under which it was [fol. 187] made or under which it was issued, whether or not it is a correct copy or a correct map as shown by the field notes.

By Mr. Dale:

Q. Now, Captain, I will ask you to state whether or not—state what you know as to whether that is a correct map as shown by the Mississippi River Commission and also as shown by the maps in the Land Office showing the survey of 1824 of the Louisiana shore and 1823 of the Mississippi shore?.

By Mr. Sharp: We also object to that interrogatory for the reason that the custodian of the records in the Land Office would be the only proper party to testify as to the correctness of the copies of records in his office. And the custodian of the field notes, or the maker of the field notes is the only one who can testify as to their correctness—the correctness of any map as compared with the field notes.

By Mr. Dale:

Q. There would be no certification to this entire map, as it existed, by any commissioner of the Land Office would there? Could there be?

A. What is that?

Q. There is no map that shows all of the data on one map existing in the Land Office, is there, that you know of, Captain?

[fol. 188] A. I would have to answer the question of the attorney by asking a question. Have you in evidence a c-rtified copy of Chart No. 45, and chart No. 46 of the Mississippi Commission of the Survey of 1882?

Q. We have.

A. Then this chart of the Mississippi River Commission if taken from the same plate that the certified copy is printed from. Therefore, it is no more than one carbon copy is to another carbon copy of the same original drawing spread upon and lithographed from the same plate. That is the Mississippi River Commission's chart.

Now, I have another question to ask. Is there is evidence a certified copy of the Government Land Survey of Township 19, North, Ranges 13 and 14 East; and is there in evidence a certified copy of the original land survey in Mississippi of Township 9, North, Range 8 and 9 West?

Q. I will answer they are.

A. Then this——

By Mr. Sharp (Interposing): Then we want to get possession of them if they are on file here, because they have escaped my attention.

By Mr. Dale: There is from Louisiana.

By Mr. Sharp: But not in Mississippi.

By Mr. Creekmore: That is a serious controversy in this [fol. 189] case as to whether or not the projection is correct.

By the Witness:

A. Whether the projections of the Mississippi townships and sections are correct?

By Mr. Henry: Whether they co-ordinate.

By Mr. Dale:

Q. Captain West, do you know whether the townships in Mississippi and the townships in Louisiana, at this particular point of the Mississippi River are properly co-ordinated and correctly co-ordinated on the map?

By Mr. Sharp: We object. The field notes are the best evidence and the Mississippi field notes are not in evidence nor filed with the exhibit.

By Mr. Dale:

Q. How did you get up that data shown there between the townships, sections and ranges shown on that map, Capt. West?

By Mr. Henry: He didn't get up that map.

By Mr. Dale:

Q. How was that map gotten up showing the sections, townships and ranges, if you know of your own knowledge [fol. 190] how it was done?

A. Shall I take either side of the Mississippi River first?
Q. Take the Mississippi side first.
A. Or shall I take the whole thing on both sides?
Q. Do as you please.
A. I will take first the Mississippi side. The correctness of the Mississippi River Commission chart of the survey of 1882, I have explained the township and section lines of the original government land survey of 1823 in Mississippi, were projected upon that commission chart by taking the township maps as furnished by the Government, reducing those charts to the same scale as that of the Mississippi River Commission chart which is one to twenty thousand. Now, in order to put them on the Commission chart the monument- which marked the land lines and corners on the ground of the original Government land survey were located. The survey of the river by the Mississippi River Commission was made by triangulation. The whole river, the east and west sides were carried along together, and located one with respect to the other by tr-angulation and permanent marks were left on both sides of the river. Frequently those marks were stones, very deep in the ground, with marks chisled in them to identify them. All of those marks of the Mississippi River Commission Survey were located astronomically, and by astronomical points by triangulation. So the position, even though they were lost—[fol. 191] covered up by the sediment,—could be located—relocated, anl from time to time the Mississippi River Commission has had survey parties to relocate and find the permanent marks of the survey throughout the entire reach of the river. Now, the permanent marks, corners and lines of the original government survey were connected with such permanent marks of the Mississippi River Commission survey, and being connected, the land lines could be absolutely fixed in position with respect to the survey by the Mississippi River Commission, and either one could be taken on a base from the connection between the permanent marks on the ground of the Government Land Survey, the permament marks in the ground of the Mississippi River Commission. Either one could be laid down as a basis and the other one projected over it in its exact position. Now, as a further evidence as to why we know the land lines are laid down correctly on the map, and we are speaking of the Mis-

sissippi side now, the line between the counties of Issequena and Warren, in Mississippi, is laid down on the ground and is known as the political division between those counties of the State of Mississippi. It is known from all of the records of the State that that line is the south boundary of Township 9, North, Range 8 West of the land survey in the Choctaw session, or the survey line west of the Mississippi [fol. 192] river. That is the land survey line which is the boundary between those two counties. When the Mississippi River Commission made this survey the Commission was not interested particularly in the political division of the counties and states, but the topography which the surveyors jotted down, wherever there was a well defined line of a section, a township, a range, or any other political division of the land survey, they noted it and put it on their charts. Now, on the composit- chart which shows the land survey of Mississippi projected upon the Mississippi River Commission survey of 1882, the Commission's chart shows the line between Issequena county and Sharkey county located on their chart that is identical with that same line as shown on the township map. Therefore, the two coincide exactly. Now, on that land survey——

Q. (Interposing.) What two coincide?

A. The Mississippi River Commission survey of 1882 and the Government Land Survey of the townships and Sections of 1823. It is shown on the map here and it is shown on the Commission's Chart the line between Issequena county and Warren county. It is the south boundary of Township 9, North, Range 8 west. It is the same thing as shown on thr projection of the land lines. There could be no doubt about the fixing of the original Government Land Survey with respect to the Mississippi River Commission Survey as far as the north and south direction is concerned. [fol. 193] Now, there might arise a doubt as to whether it was correctly fixed in an easterly or westerly position unless there was some evidence to show. Here on the Commission's Chart No. 45 the line between sections 16 and 17 is shown on that chart. It is identical with the line between Sections 16 and 17 as shown upon the Government Land Survey chart. The same is true as to the line *eb*tween Sections 8 and 9—I am glancing at random—and between Sections 9 and 12; as between Sections 10 and 11. There are

several others, but that is enough to fix the identical location of the land surveys—Government land surveys of 1823, with the lines of the Mississippi River Commission survey of the river of 1882, in an east and west position. Now, having fixed them identically both in an east and west and a north and south position, they naturally co*in*cide and are correct.

Again, it will be remembered that the Government is not deeply interested in land lines, and the Government is prohibited by law from paying for anything—for any right of way, for lands over which they go, requiring the local authorities to provide those sights of way, but being certain that the proper right of way is provided before they will destroy the property. Therefore, the Levee Boards, in order to know what right of way they take from the owner, must know the sections, and not only the sections and townships, but the identical me*e*ts and bounds of that particular [fol. 194] piece of land. In order to know that they must connect the land lines of the original government survey in order to satisfy the government that here is the right of way provided for, a definite piece of land. The same thing is true in Louisiana as in Mississippi, and all of these land lines have been tied up with the Government marks of the Mississippi River Commission surveys.

I don't see how I can make it any clearer as to why the land lines of the original government land surveys are correctly projected upon the Mississippi River Commission charts. Those are known, not only in this locality, but in all localities from one end of the Mississippi river to the other.

Q. Does that map show the proper projection? Show it correctly?

By Mr. Sharp: We object to the question.

By the Commissioner: Let him answer, and the objection will be considered later.

A. That is what I have just stated, that it does show the correct position of the land lines on both sides of the river with respect to the Mississippi River Commission surveys.

By Mr Dale:

Q. Now, I am going to ask you to take all of the maps [fol. 195] which have been offered in evidence and give a general history, insofar as they show, and your knowledge goes, of the changes that have taken place at the point in controversy, on both sides of the river. I am not going to ask you the specific questions, but will ask you to go ahead and state it in your own language?

By Mr. Butler: Before he goes into that explanation, Judge Dale, let us have a copy of this so we may be able to follow you as you go along.

By Mr. Dale: We now offer in evidence an Exhibit marked Complainant's Exhibit N, the same being a blue print.

By Mr. Sharp: It is hereby agreed that the blue print marked Exhibit N, showing township 9, Range 8 west, in the state of Mississippi, as surveyed in November, 1823, by Marion Hitchcock, deputy surveyor, assisted by G. Davis, surveyor of public lands south of the State of Tennessee, and appearing to have been certified to by R. D. Moore on the original plat from which this blue print was made, as showing a map of township 9, range 8 as appears in the Land Records in the office of the Land Commissioner of the State of Mississippi; that it may be admitted in evidence without further certification by the Land Commissioner or other official.

[fol. 196] Q. You may proceed, Capt. West.

A. The Government Land Survey Chart of the survey of 1824 in Louisiana, which was a survey carried northward from Red river and afterwards towards the Mississippi, is shown on Chart marked Exhibit A. This chart shows what is termed and known as Newman's Point, in Louisiana. The chart of the Government land survey of 1824, as shown on the township plat Township 8 Range 13 East, shows the territory bordering on the Mississippi and Louisiana below Newman's Point.

Exhibit N shows Township 9, Range 8 West of the Government Land Survey of 1823, in Mississippi. Shows the territory on the east side of the Mississippi River opposite Newman's Point.

Exhibit BB shows Hopkins' Island which was surveyed in 1869-70. The survey was part in the fall and part in the spring, and was sectioned as a part of Louisiana *as a part of Louisiana*, connected with the general land survey of the State of Louisiana made in 1824.

Exhibit C is a chart of the Mississippi River Commission of a survey of 1882, made on a scale of 1 inch to one mile. This chart shows the Mississippi River in the vicinity of Newman's Point and Albemarle Bend, and also for some distance below that.

Q. How is the survey of 1882 shown on the map, Exhibit C?

[fol. 197] A. This chart shows the Mississippi River as it existed in 1882, in black lines and symbols. There has been drawn on this chart, in red lines, two banks of the Mississippi river, made from a survey by the Mississippi River Commission in 1894. These red lines were superimposed upon this chart of a survey of 1882 by the Mississippi River Commission. In other words, these red lines were put there by the Commission in the central office.

Q. I note some red, broken lines on this same map, Captain West, and I will ask you what they represent?

A. On this chart is a broken red line. These broken lines represent the edge of the bar at the time of the survey, all of which is explained in print upon the face of the chart.

Exhibit D is the same as Exhibit C with the addition of the shore and the by-lines of the Commission's survey of 1903.

Exhibit E is a chart on a scale of one inch to one mile of the Commission's survey of the reach of the river in question made in 1913.

Exhibit F is a chart of the reach of the Mississippi River in question, on a scale of 1 to 20,000, of the Mississippi River Commission's survey of 1913.

Exhibit G is a blue print showing the township, range and section lines in Mississippi and Louisiana, covering [fol. 198] the territory in question, of Mississippi in 1923 and of Louisiana in 1924. These, and succeeding blue prints marked Exhibits H, I and J, were made by myself, (C. H. West), for the purpose of illustrating the position of the river at the time of the original government surveys and of

changes after that with respect to the township and section lines on the two sides of the river, in the vicinity of the territory in controversy.

Q. I will ask you now to give a progressive history of the changes in the Mississippi river as shown by these maps?

By Mr. Henry: We object to that. You are asking of this witness a general history, which would not mean anything at all for the maps will all speak for themselves, and what the witness might say would be merely an opinion as to what the general history is. One man might tell it one way and another man another way. It is just a mere matter of opinion of the witness.

By the Commissioner: Let the objection be noted, the same to be considered along with the others, and to be passed on later.

By Mr. Dale:

Q. You may proceed, Capt. West?

A. The blue print marked Exhibit G shows Willow Point [fol. 199] as defined by the government survey of the State of Louisiana in 1824. It also shows, by broken and dotted lines, the outline of Willow Point as shown by a survey made by Louisiana in 1866. The heavy lines indicate the Mississippi and Louisiana shore lines as they existed at the time of the original Government land surveys. The broken dotted line indicates the mid-river distances as it existed at that time. This chart shows Tullos Island, later known as Island No. 98, as being on the Mississippi side of the river, and as being a part of Township 9, Range 8 West, of Mississippi, and occupies parts of Sections 20, 21, 28, 29 and 30 of that township.

Exhibit H shows the position of the Mississippi River as it existed in the Mississippi River Commission survey of 1882, when that survey was made. This chart shows the outline of the eastern end of Willow Point as it existed in 1869-70 by a broken line, which is further east than the lines shown by the survey of 1866. This chart shows also the position of Hopkins' Island as it existed in 1870, and its connection with Willow Point, according to the survey which sectionized Hopkins' Island as a part of Louisiana, as shown by Exhibit BB.

Q. Explain what you mean in connecting Hopkins' Island with Willow Point.

[fol. 200] A. What I mean by its connection with Willow Point is the distances and direction from a given point on the Louisiana side of the original survey on the Louisiana side with Hopkins' Island in order to locate it in its proper position to the Louisiana land survey. This chart shows the Mississippi shore line to be about one mile east of where it was in 1823, and of that part of Tullos Island which lay in Sections 20, 29 and 30, had crept into the river, and only a part of that which lay in section- 21 and 28 existed at that time. In 1870, at the time Hopkins Island was sectionized as a part of Louisiana, the main shore line opposite Hopkins Island was about 3,000 feet further inland than it was at the time of the Commission's survey of 1882, and a channel of the Mississsippi River in 1870, passed between Hopkins' Island and the main shore, as it existed in 1870, as is shown by the Government land survey chart of Hopkins' Island, marked Exhibit BB. After 1870 the river in the bend northeast of Willow Point began to move in a southwesterly direction and built out the Mississippi shore a distance of about 3,000 feet, so that in 1882 the Mississippi shore line of the river was along what had been the eastern boundary of Hopkins Island, and the channel of the river, at that date, 1882, was over the position that had been occupied by Hopkins' Island in 1870, having destroyed all of the island except a very small part of the southwestern extremity of the same.

[fol. 201] Exhibit I shows the position of the two banks of the Mississippi River as they existed according to the survey of the Mississippi River Commission made in 1894. This chart shows a very considerable change in the position of the river from that which it occupied in 1882, the river along the north side of Willow Point having moved southward by caving, about one mile, and having extended east about one half to northeast about one mile. At this time the Mississippi shore had receded eastward until all of Tullos Island had disappeared, and the shore line was about one quarter of a mile east of the east shore of Tullos' Island—of where Tullos' Island or Island No. 98 had been.

Exhibit J is a blue print showing—a blue print chart showing the position of the Mississippi River according

to the Mississippi River Commission's survey and charts for 1913. This chart shows that the Mississippi River had caved along the Louisiana shore on the north side of Willow Point and west of there about one and a half miles. This chart shows that Albemarle Bend had swung east and northeast by caving until all of Sections 18, 17, 16, about one half of 8, and all, except a strip on the north part, of 9; a northeast by caving until all of Section- 18, 17, 16, about one fourth of 27; all except a corner of 28; a part of 33; all of 31, and a greater part of 32 had caved into the river, and the Mississippi shore line at that time was about one mile east, in fact, about a mile and a quarter east of the eastern [fol. 202] boundary of the position formerly occupied by Tullos Island. This chart also shows a cut off across the neck of land between what had been called Newman tow head and the original Willow Point. This cut off began during the flood of 1912 and was enlarged during the flood of 1913 so that the greater part of the flow of the Mississippi River went that way during that year. Following the cut off the upper end of the old bend known as Albemarle Bend, began to fill up by deposits and in two or three years it had filled to such an extent that there was no flow around the bend except during extremely high water. Since 1913 the cut off has enlarged towards the east, showing a tendency to build out the stub of the bar lying east of Willow Point, and to cave away towards the eastward, what is known as Newman's tow head.

Q. At the time of the cut off in 1912, and just before the cut off of 1912, do you know on which side of the river the current was around Albermarle Bend on the east of what is now Newman's tow head?

A. Yes, sir; prior to the cut off of 1912 and 1913 the channel of the river was around the bend, known as Albemarle Bend, and the caving away of the Mississippi shore was very rapid. The caving, in fact, had been very rapid from the time of the 1882 survey by the Commission up to the time the cut off was made. It was known as one of the most rapidly caving bends in the lower Mississippi River. Levee [fol. 203] lines built in Mississippi to the eastward of Albemarle Bend would be in jeapordy within two or three years after they were constructed, and one retirement of the levee after another occurred until it became a burden to raise

funds to keep the levee back from the caving banks. That condition had continued until about 1909 when the Bend was so long and so deep that to build a new levee would require considerable miles and the cost would be so great that the Levee Board hardly felt able within the time limits and the revenues to build that levee in one season. It was evident that it had to be built within twelve months or the river would get the levee that then existed and the whole country would be open to the flood during that year. I had a very complete survey made of the situation in the Mississippi Levee District. That was the last year I was chief engineer of that district—in which I showed the probable location of the only feasible levee that could be built, and I prepared a map showing the progressive caving, and that even if the levee was built, the rate of caving that had been going on, if it continued, would soon reach that levee and it would be lost—a lost investment. I then concluded the only way to safeguard the country was to revet the Mississippi bank and prevent any further recession by caving. There was no possible way, no equipment and no trained forces for that revetment except such as the Mississippi River Commission [fol. 204] had. So I appeared before the Mississippi River Commission and laid before them a chart showing the heavy caving,the rapidity with which it was going on, and the utter impossibility or more than tempor*a*rizing, and that a very great cost, unless the bank was revetted and left intact. Well, the following year during the low water season of 1910, the Mississippi River Commission sent in several revetment forces and began the revetting of the banks at that point along the Mississippi shore. They did not complete the work, but the following low water season in 1911, they came very near completion of what then appeared to be necessary. The 1912 flood came and started the cut off, but there was still a defined flow, a part going through that incipient cut off of 1912 and a part around the Bend. So some repairs had to be made in 1912. In 1913 the cut off widened out until the current went that way, and there was no further attack along the Mississippi banks along the Bend and no further need for any further expenditures on revetment or on levees. The whole patient had been cured of the disease that had been attacking it for so long, and no further expenditures have been made in the way of building

new levees or revetment since the revetment was put in in '10, '11 and '12.

Q. Now, Captain, after the cut off, instead of the river continuing to flow around Albemarle Bend—however, first after the cut off, as I understand it, the river did continue to flow around Albemarle Bend and the old channel for awhile?

A. For awhile. There was a divided flow. Not all the [fol. 205] time. During high water there was a divided flow, but the bulk of it went through the short way, naturally so, because the slope across where the cut off was made was very much greater. The velocity was very much greater, and therefore the bulk of the water that went that way was greater than that which went around the bend.

Q. Now, while the water did continue to go around the bend did the accretions still continue to form around the bend?

A. The accretions began to form around the bend as soon as the current around the bend slowed up.

Q. To which side did most of those accretions form? To the Mississippi shore or to what was known as the Newman tow head?

A. That would take a cross section survey. No man could tell that in going on there and looking at it, and as to which side——

Q. (Interposing.) Well, you dont know?

A. No; I dont know. It is an important question in river improvement. All of the trouble had stopped and we did not investigate that at all. Sometimes I guess I could say that it forms more on one side than it does on the other.

Q. You did not go around Albemarle Bend after the cut off?

[fol. 206] A. Never since '13 have I been around the Bend. I saw it in '12 at both high and low water, when I was there, and in 1913 at both high and low water, but I have never been around that bend since 1913.

Q. Have you stated that Tullos Island, as it existed in 1882, entirely disappeared? If you have not I will ask you the question. Did it entirely disappear? I will ask you the direct question. Subsequent to 1882 did what is

or what was known as Tullos Island or Island No. 98, entirely disappear?

A. Yes, sir; it entirely disappeared by the caving, the Bend moving eastward until in 1913, when the survey of the Mississippi River Commission showed the main shore line to be about a mile and a quarter east of the eastern shore of Tullos Island as it had existed. Yes, sir; it taken Tullos Island, and came the full length of Tullos Island and still further eastward in Mississippi.

Q. Well then, you will not state positively that no part of Tullos Island, as shown here in 1882, is left?

A. Yes, sir; as this Bend progressively eat away the main shore and west eastward, the accretions on the west side followed it up continuously, survey after survey. Now some of the Commission's charts will show the shore lines on both sides every year. A multiplicity of them would be shown as the river progressed. But these lithographed [fol. 207] charts are not made every year. They are only made at long periods. They are very expensive to get up, and they show the river from long periods of say from ten to fifteen years apart. The original land surveys were made 91 degrees and 21 minutes west longitude, and this, as shown on the Mississippi River Commission chart was very near the eastern end of Willow Point at the time of the original Government survey in 1924. Now, that was about here (indicating). Here was Willow Point, (indicating). Now, at the time of the survey these same lines you see here—the fine lines, they are the same as these lines here. Now, as the Bend caved eastward into Mississippi the river maintained about the same width at all times. The accretions from the convex side formed just as the caving eat away the bank on the concave side. So between the date of the original Government survey and the Commission's survey of 1913, the river had moved eastward to about half way between longitude 91 and 91 degrees and 1 minute west longitude. Or, in other words, about three and a half minutes longitude to the east.

Q. As I understand, you state that at one period that you were asked about in regard to Hopkins Island, at the time some it remained—I will ask you whether or not Hopkins Island did not entirely disappear before the cut off of 1912?

A. The statement regarding Hopkins Island was in explanation of Exhibit H. In there I stated that at the time [fol. 208] of the Mississippi River Commission's survey of 1882 the channel of the river occupied the position which had been held by Hopkins Island and had destroyed all of the island except a small part of the southwestern extremity. Now, whether it had all been destroyed at a slightly previous or a slightly later date, there is no history, and it would be a mere opinion. I hardly think that that southwesterly extremity was destroyed because the river from 1882 on up to 1913 was moving eastward from that southwest extremity.

Q. Then I will ask you if a part of Hopkins Island was, or did remain, subsequent to 1882, was it or not attached to Willow Point bar?

By Mr. Butler: We object to that.

By Mr. Dale:

Q. Was it joined to it or not? The side of the river or not? The side of the channel, or where was it.

A. According to the chart of the survey of 1882 it was connected up with the Louisiana shore. The contours from this chart are from actual levels and show the elevation of the ground by a series of lines, each line the same elevation, with the figures and marks showing the elevation on out until you get to the river. Now, the bar, at low water—the lowest part of the bar shown there is seventy-five feet. That was seventy-five fet above zero, or what is [fol. 209] known as Memphis datum. Now, a datum plane is something fixed somewhere so all elevations are taken so much below or above it, and by the datum plane we are able to get the correct elevation as near as is humanly possible to do so of the continuous ground, the dry ground all the way out to the location of Hopkins Island in 1882 as the Point built out.

By the Commissioner: Gentlemen, the hour of adjournment having arrived we will now adjourn until 9 o'clock A. M. tomorrow morning.

Whereupon, an adjournment was here taken until 9 o'clock A. M. Wednesday morning, October 6, 1926.

10—9-O.

Wednesday morning, October 6, 1926, at 9 o'clock A. M., met pursuant to the above adjournment. All parties present as of yesterday, and the direct examination of the witness, Capt. Chas. H. West was resumed.

Capt. CHARLES H. WEST, recalled for further

Direct examination.

By Mr. Dale:

Q. I understood you to say yesterday that you had reduced this township map of Louisiana and Mississippi to the standard of the Mississippi River Commission map. I will ask you to explain what you meant by that?

A. That simply means that the township plats and the [fol. 210] Commission charts were given the same scale, so that a given measurement on one would be identical with the same measurement on the other. In other words, that a mile measured on one would be the same as a mile measured on the other.

Q. You don't mean that you reduced the size of the township map?

A. No; the term reduction to the same scale would mean that one might be enlarged or it might be reduced in order to get it to the same scale as the other.

Q. That is what I wanted to get clear. That is the way I understood it. I just wanted to get it clear. The witness is yours.

Cross-examination.

By Mr. Butler:

Q. Captain, I understand that there has been a number of surveys of the river in the vicinity of the point in question and to get it chronologically stated in the record, I want to ask you what was the first survey, and by what exhibit is it shown?

A. The first survey was the Government land surveys on the Mississippi side. That survey was made in 1823—the Government Land Survey.

By Mr. Dale:

Q. Wait a minute: Wasn't that shown by Exhibit N on yesterday?

A. No; here it is.

Q. The Mississippi side?

[fol. 211] A. That is shown on the chart M and also the Blue Print that you had yesterday which is marked "N." The next survey was that of the Government land survey on the Louisiana side, which was made in 1824.

By Mr. Butler:

Q. So that we may check these different surveys by the Exhibits which have been offered in evidence on yesterday will you please refer to the exhibits that were offered yesterday so that we may have access to the maps?

A. You were asking last about the Louisiana side?

Q. Yes, sir.

A. That is on the Chart marked Exhibit A, also Exhibit B and is also shown on Exhibit F.

Q. Now, when was the next survey, and by whom?

A. The next survey of which there is a record was very meager. That was a survey of the Louisiana shore in 1866, and there is no record here of any part of that survey except the Louisiana shore line,—just one bank—one shore line.

Q. Do you know where the record of that survey would be found?

A. You would find it in the Land Office. I don't know. The State Land Office in Louisiana. Also in the office of the State Board of Engineers.

Q. You have no record of that survey here?

A. No; I have nothing except the line that was platted [fol. 212] on this from the record. It is very meager—just one line.

Q. When was the next survey?

A. Now, I could explain why this line was run, if you care to have that in the record.

Q. I don't care anything about that.

A. It might give you some bearing on why such tremendous caving has occurred all through this reach here. It might be of interest to you. It don't have any bearing on the case.

Q. I don't care about that at this time. Now, when was the next survey after the survey of 1866?

A. The next survey was in 1869 and 1870, and is shown on the land survey Chart marked Exhibit BB. It is also shown on the chart marked Exhibit H. That was a survey of the island which had formed in the river known as Hopkins Island, and was a survey of the island as it existed in 1869 and 1870.

Q. And when was the next survey?

A. The next survey of which there was any showing here was a survey of the Mississippi river by the Mississippi River Commission made in 1882. The position of the river is shown on Chart marked Exhibit M, and also on Chart marked Exhibit H.

Q. Is it also shown on Exhibit C?

[fol. 213] A. Yes, sir.

Q. On Exhibit C?

A. Yes, sir; that is the same survey, but the map is charted on a different scale.

Q. And Exhibit D is it not?

A. Yes, sir, and Exhibit E.

Q. Now, you say that the next survey shown here was in 1882. Do you know of any survey between 1869-70 and 1882?

A. I know of none at all earlier than between—what did you say, '69?

Q. 1869-70 to '82?

A. I know of none at all. There possibly have been a survey made in the interim by some of the levee boards, but they are likely to have been a mere local shore line. No general survey of which there is a record that I know of. Nothing that I know of.

Q. Now, that survey of 1882 shown on this chart you have just named, is, as I understand it, a survey made by the Mississippi River Commission, and blue prints of that survey were made and later were printed on charts?

A. Yes, sir; the way those Mississippi River Commission charts are got up, they are made first on large working sheets and then they are reduced to a convenient scale. One [fol. 214] scale is shown on the chart marked Exhibit F is 1 to 20,000. The same survey is shown on a smaller scale chart marked Exhibit E. Now, when the survey has all

been platted up and is all checked out, and then put down on the paper, with all the topography shown, then, in order to get many copies, that is lithographed, and any number of sheets taken from the same stone. So they are all identical, and those stones are preserved until there is some later general survey made.

Q. Now, what does the survey of 1882 show with reference to the levels and the timber line and things of that kind?

A. The survey includes the shore lines,—two bank lines of the river. It includes the topography as it existed at the time of the survey out also about a mile from either side of the river, and it also shows the soundings across the river at intervals of some two or three hundred feet, up and down the river, and those soundings are taken at short intervals across the river, so that the drawings could be made showing the shape of the channel at the time the survey was made—cross sections of the channel. They also show elevations from the bank of the river out about a mile on either side at intervals of five feet. That is the fine lines you see on the face of the map over the land, and they have figures on them. Now then, there will be another fine line running parallel with that, varying in width, that will be [fol. 215] five feet higher, which from this line, if you will follow it around, will have the same identical elevation. Then the next one is five feet higher or lower, as the case may be. Here you have the same elevation as you follow the line. Those are what are called contours, and in studying the map you can get a pretty clear idea of the shape of the land, from a study of those contours. The base and datum plane used in this survey are what is known as the Memphis data, and the figures given on the face of the map except in soundings, mean so many feet above that datum plane. The particular datum plane that was used in this general survey of this part of the river was known as the Memphis datum. In the early days, or even as late as 1882, it was not known definitely what the mean sea level was, or the mean gulf level. So there were different parties put into the field, at different places. Up the river the parties there established their datum plane at Cairo, in which they estimated that sea level there—what the sea level there would be, and they called that the Cairo datum. Now, at Memphis they established there what they believed was

pretty close to the mean gulf level, and they called that the Memphis datum. Now, neither one was the gulf level. But after, the mean gulf level, through a series of observations with tidal guages, at two or three points on the gulf coast—one at East Bay, and one at Biloxi, those guages were observed every day through the low and high tides, and a rec-[fol. 216] ord kept—a clock work record—that ran over a reel. These records all there at Biloxi, of the tides, were kept daily, and relayed for a great many years, until finally they were able to say between the high and low—the mean high and the mean low—what the Mississippi Gulf level was. Now, after getting that, then the lines of the precise level having been corrected with the branch works all over the country, that country, they would know exactly what the Memphis datum meant as compared with the Gulf. Now then, in this case, on this chart, every figure of a con*y*our here differ from the mean Gulf by about six and three quarters feet; about 6.75. That is, say, within about 1/100 of a foot——

Q. High or low? Over or under?

A. It is under, because the figures here for Memphis datum reading 100, and if you want to reduce that to mean Gulf level you have to take six and three quarters from it.

Q. Add it wouldn't you?

A. No; you would add the mean Gulf to get Memphis, but if it was the Memphis datum here you would have to take 6.75 feet from this contour, and then you would know exactly what that spot on the map is above mean Gulf level.

Q. You are speaking of the survey of 1882?

A. Yes, sir.

Q. In addition to it showing what you have detailed, it shows the longitude and latitude of the territory in ques-[fol. 217] tion?

A. Yes, sir.

Q. And that is shown by lines extending across the chart or map?

A. North and south.

Q. And east and west?

A. Yes, sir.

Q. At what intervals are those shown?

A. They are at intervals of one minute latitude and one minute longitude, and each one is marked on the chart the degree and the minute of latitude and longitude.

Q. In addition to showing the latitude and longitude it shows here the established boundary like the county lines and parish lines, and things like that, does it not?

A. All that that survey was connected with at that time. It has all of that in there; yes, sir.

Q. And then it shows the character of timber growing—cottonwood or willow?

A. Yes, sir; the topography—just look at the timber and put that "cottonwood," that is willow, or that is oak or sycamore. You note the topography that goes with the surface part. That is noted within a certain area,—the character of the timber. That is shown on the map in a great many places, but not in all places. But in a great many. Now, on the map they are not all shown in evidence. [fol. 218] Here you will see hackberry right here. Here is cottonwood. It just gives the general character of the timber, and that is all they could do.

Q. That survey does show the character of the timber on Island 98, formerly known as Tullos Island, does it not, Capt. West?

A. The character of timber of what is left of Tullos Island on that map is some cottonwood and some hackberry and some gum. That is noted on the face of the chart.

Q. Now, Capt. West, what was the next survey of any kind of the territory in question after 1882?

A. After 1882 there were a number of surveys of the bank lines made. Whenever there was any decided caving the shore line would be run so they could plat the lines on the maps, the charts, and show the recession. But there was no general survey of the bank lines until 1894. The survey of 1894 did not take in the topography. It only took in the change in the position of the river alone, and that survey was platted on the charts of the 1882 survey. The chart shown as Exhibit C and Exhibit D, have the shore lines of 1894 platted over the chart, shown in red lines on the face of the 1882 chart.

Q. Now, was the survey made in 1894 similar in all respects to the survey of 1882 by the Mississippi River Commission, showing the topography and the levels, the latitude [fol. 219] and longitude, consisting of three sheets?

A. Small scale sheets?

Q. No, sir; large maps?

A. I know of none that were marked up. That survey was a general survey for a comparison of the river in '94 with what it had been in '82, and the lines of that survey were platted on the chart of 1882. It was something of a resurvey—a general resurvey with all of the details of the topography, as they were merely studying the changes that had taken place in the river itself, and that was platted on here in red lines so as to bring it out boldly.

Q. Then, you have no tracing or blue print of the Mississippi River Commission showing the topography and the details shown on the survey of 1882, as I understand. You simply have a tracing extended or projected on the chart of 1882 showing that?

A. Yes, sir; that is correct.

Q. Now, then, there was a survey of 1900, 1903 and 1907 also was there not—surveys during those dates?

A. There was survey of the bank lines in certain localities—not continuous—almost every year. You have no record before you of any of those annual surveys in this locality except the one of 1903. That merely shows the bank lines in red on the 1882 chart.

Q. Going back now to your exhibits, Exhibit E and Exhibit F are the same thing except on different scales, as [fol. 220] I understand you?

A. Yes, sir; they are the same survey, the Chart marked Exhibit E being on a scale of one inch to one mile. That is, one inch on the paper represents one mile on the ground. The Chart marked Exhibit F is on a scale of one to 20,000. That is, one inch on the map represents 20,000 inches on the ground.

Q. Now, your Exhibit F does not show—I mean Exhibit E does not show the details nor the levels and things of that kind as is shown on the large map, Chart Exhibit F, but they are made from the same survey, as I understand it?

A. The same survey. This is the survey of 1913.

Q. No; I am talking about now—'13—all right.

A. I have reference to the chart of the survey of 1913. The topography as shown on the two charts is the same except that on the smaller chart it does not always extend out quite so far perhaps as it does on the large scale chart. When that survey was made the instructions were to show the river, the cross sections of the river by soundings, and

the contour of the land above the water at five foot intervals out as far from the river as the levee lines on the two sides, and as far beyond the levee lines as they could get [fol. 221] the topography from the setting up of the instruments along the levee. That did not carry the topography as far away from the river as the survey of 1882. It was to save cost, feeling that they were not justified in going to the expense of getting anything beyond the levee except for perhaps 1,000 feet.

Q. But, in a general way the chart marked Exhibit F shows the same with reference to the survey of 1913 as the chart which you have heretofore testified shows with reference to the year of 1882, that is, the latitude, the longitude, topography and the levels and the things of that kind?

A. Yes, sir; the mean latitude and longitude here is shown on the chart as they were on the chart of 1882.

Q. Now, with reference to Exhibit G which was offered in connection with your testimony on yesterday, as I understood you, the data in that blue print was taken from the Mississippi survey of 1823, the Louisiana survey of 1824 and to the surveys of 1866, which is represented there?

A, Yes, sir.

Q. Is that right?

A. That is correct.

Q. That does?

A. Yes, sir.

[fol. 222] Q. Now, your Exhibit H to the bill of complaint about which you testified yesterday is made up from what data?

A. It is merely the township and section lines of the original land surveys shown in connection with the position of the river as it was in 1882. In other words, it is shown on the chart marked Exhibit H identically with the river as shown on the Mississippi River Commission chart of the survey of 1882.

Q. But, as I understand you, it shows the bank lines as shown on the Louisiana survey of 1866?

A. Yes, sir.

Q. And then it shows what was known as Hopkins' Island according to the survey of Louisiana in 1869 and 1970?

A. Yes, sir.

Q. You do not show the Louisiana side of 1824 on that map, do you?

A. No, sir; I did not, the shore line here having been fixed on the other chart and compared with it, I just wiped the line out.

Q. Nor does this show the shore line of Mississippi in 1823?

A. No.

Q. Or the boundary, extent and location of Tullos Island? [fol. 223] A. Only as it existed in 1882 because this data of the river was taken from the Commission's survey of 1882.

Q. With reference to your Exhibit I to the bill of complaint, about which you testified on yesterday, I will ask you where you got the data upon which you based that blue print?

A. That is the Mississippi River Commission plat. The positions of the township and sections in Mississippi and Louisiana remain the same on all of the exhibits from G to J inclusive. The only change between these four charts is in the position of the Mississippi river at different dates that are given. Otherwise, the charts are the same. It merely shows how the river changed with respect to townships.

Q. That does not quite answer my question. I want to know where you got the data for these drawings showing the river and the main channel?

A. From the Mississippi River Commission charts of the dates that are given.

Q. Now, what dates are they?

A. Well, the 1882 survey; the 1894 survey and the 1913 survey.

Q. Now, you show the bank lines in 1886?

A. Yes, sir.

Q. On the Louisiana side?

A. Yes, sir.

[fol. 224] Q. That data was gotten from the survey of Louisiana of 1866 about which you have referred to?

A. Yes, sir.

Q. By showing the bank line north of Willow Point on both sides of the river as of 1894, and you show the bank line all the way around down to the southern point or opposite Section 32 as of 1894?

A. Yes, sir.

Q. Now, is that map not compiled from the survey of 1894?

A. The shore line?

Q. Yes, sir; the shore line?

A. The shore line of the Mississippi river is merely the shore line as shown by the Mississippi River Commission's survey of 1894.

Q. And the section lines are simply the section lines that are indicated—simply the section lines and sections that are shown on the original surveys of the Mississippi and the Louisiana side?

A. Yes, sir.

Q. Now, I notice in these points projecting out here you have got the word, "accretion" written on there. Where did you get the data to write that in?

A. By following the charts, as the Mississippi shore receded by caving, and the Louisiana shore followed it up [fol. 225] by accretions, the river remained at approximately the same width to whatever position it had. For instance, you take the chart of 1882, of the Mississippi River Commission, shows the accretions out beyond the shore line, the Louisiana shore line of 1824, and beyond the shore line of the survey of 1866. Just a gradual building out. That is characteristic of the Mississippi through the lower valley, that it maintains about the same width all the way.

Q. As I understand you the word "accretion" is written in there as a result of your opinion from your study of these maps and charts about which you have testified, and not from any data shown on the government survey as accretions?

A. No, sir; they are shown on the Chart of 1882, following out on Willow Point as Albemarle Bend receded east, and they are shown the same on chart of 1813. Now, as I say, the survey of 1894 only shows the bank lines.

Q. Well, now, Captain, does not the chart of 1882, showing the point that you have got marked "accretions," as composing Island No. 98 in Section 21, and the land south of Section 16 in Section 21?

A. Let me see if I understand you.

Q. The question I asked you, you have the word "accretions," have you, marked in Section 21 and some in Section 17?

A. Yes, sir; the river having moved eastward.

[fol. 226] Q. Now, I want to ask you this. As I understood you you said you got that data from what was shown as accretions in the survey of 1882. I want to ask you if the chart of 1882 did not show that Section 17 was out on the bank; Section 21, or a part of it at least, was a part of Island No. 98, and Section 16; all the north half of the north part of Section 16 was out on the bank?

A. In what year?

Q. In 1882?

A. In 1882 a part of 21; a part of 28 were on the bank to the east of the Mississippi; yes, sir.

Q. And Section 16 and Section 17?

A. Nearly all of Section 16 and a little more than half of 17 were also on the bank east of the Mississippi.

Q. So, if I understand you, if those particular sections were projected or drawn on Exhibit 1, and if you used data of 1882, that would show that in 1882 that was land out on the bank?

A. Yes, sir.

Q. Now, going back to my question then in regard to these accretions put on there, that is your opinion of what happened between 1882 and 1894, and 1894 and 1913, is it not?

A. No; it is a little more than a mere opinion. The chart of 1882 shows accretions beyond the Louisiana bank line [fol. 227] of 1866, out for a considerable ways. The chart of 1913 shows accretions going even beyond the Louisiana shore line of 1894. Therefore, the space between those two periods is covered by the chart or the survey of 1913, which shows the accretions throughout. And again, they had to be accretions in order for the river to maintain approximately the same width throughout all the period of this moving eastward. The volume of the water carried by the river is such that it adjusts the channel to suit the load it has to carry of water. Then, my observations of that land have been quite carefully made since 1898. Prior to 1898 I have been closely observing what the river was doing as I was responsible all that period since '98 for safeguarding against disaster through changes in the river. Now, prior to 1898, and beginning about 1893, I was along that part of the river several times, and my observation was, during that period, the river maintained about a given width. Had

it been wide and shallow I should have observed it, and had it been wide and shallow the caving would have slowed up. But being deep and narrow between the bar line and the Mississippi shore was the cause of the rapid caving throughout. So it is not a mere opinion during that lapse of time between the shore lines of 1894 and 1903, or between 1892 and 1894.

Q. Now, you referred to a survey made in 1894. Will you give us a copy of that survey? The Mississippi River Commission has it, has it not?

[fol. 228] A. Only so far as it is shown on the chart of the survey of 1882 in red lines.

Q. Don't the Commission keep the data upon which that line was projected on the chart?

A. Oh yes, sir.

Q. The work sheet?

A. The field notes and the work sheets would be in the Secretary's office in St. Louis.

Q. In St. Louis?

A. Yes, sir.

Q. And that would be available, would it not, at the proper time?

A. Well, I could get a copy from the Secretary; yes, sir.

Q. Now, will you, Captain, get a copy, a certified copy of the survey of 1894 and file it as Exhibit One to your cross-examination?

By Mr. Dale: You have got a copy of that. I think we filed a copy of it here.

By Mr. Butler: Not a copy of that.

By the Witness:

A. The field notes of the survey are on file in the office of the Secretary. Of course, he would not give you the [fol. 229] original field notes, for then he would lose the base. But they would merely enable you to plot these same lines that he has there. That is the only record that is in shape to be seen that the secretary has—the plat in red lines on the face of the old chart.

By Mr. Butler:

Q. Captain, will you ascertain if there is not a blue print or a drawing showing in detail the survey of 1894, or in

detail of some character of the survey of 1894, relating to the survey of 1894, as is shown in the survey of 1882, and if so, will you file that as an exhibit?

A. Do you mean with the same data here?

Q. Yes, sir; file it as Exhibit No. 1 to your cross-examination?

A. Yes, sir; I will write to the secretary for that but I am not sure that a chart of that kind exists. That's a mere platting of the 1882 charts and does not change the position of the shore line. They did not go into the question of taking a detailed topography. They were only trying to study the change in the river itself.

Q. Now, this exhibit that I have been asking you about, Exhibit I, is a drawing that you got up for the purpose of being annexed to the original bill in this case, as I understand it, and is an exhibit to the original bill?

A. Yes, sir; the plat merely shows the position of the river [fol. 230] with respect to the land lines in the year 1894.

Q. Now, with reference to Exhibit J to the bill of complaint about which you testified yesterday, from what source was the data shown on that exhibit taken?

A. That was the position of the Mississippi river according to the survey of 1913 with respect to the township and section lines on the two sides of the river.

Q. And it shows the bank lines on the Louisiana side in 1866?

A. In 1866 and 1913 as they existed after the cut off had occurred.

Q. Now, what charts were used to put this data on the map? That is what I am trying to get at. I might not make myself clear.

A. How's that?

Q. What charts were used to put this data on this map?

A. The position of the river there is the same as is shown on the Mississippi River Commission's survey of 1913, as shown on Exhibit F.

Q. In other words, you used Exhibit F for the data from which to make your Exhibit J?

A. Yes, sir; so far as the river is concerned.

Q. So far as the river is concerned.

A. That is correct.

Q. I want to ask you, Captain, if you have here the [fol. 231] tracings of your maps, 1, 2, 3 and 4 from which the blue prints were made?

A. That would be what exhibits now?

Q. Your msps, 1, 2, 3 and 4. You have filed to the original bill of complaint blue prints, one of which is marked Exhibit G, one H, one I, and one J. In other words, four blue prints. I want to ask you if you have the original tracings or drawings from which those blue prints were made—have you them here?

A. The work was first done upon tracing paper or tracing cloth and then copies in the form of blue prints were taken from those tracings. The tracings from which the blue prints were made I have.

Q. You have them here?

A. No, sir; I have not them here.

Q. Will you file those tracings as Exhibits 2, 3, 4 and 5 to your cross-examination in this case?

A. Yes, sir; I will. You must not lose my original plates, however, for if you do there can be no more blue prints made. It is not customary to give up the tracings, but that will be done.

Q. We would like to have them.

A. Yes, sir; where will I send them.

Q. We would be perfectly willing to stipulate that as soon as this case is finished that the original tracings may be [fol. 232] withdrawn and returned to Capt. West.

A. Yes, sir; but let me understand where you want me to send them.

Q. Send them to the Commissioner, Hon. Jack Thompson.

A. Well, let me mark that down.

By the Commissioner: Why not send them to the stenographer, as I want him to keep these exhibits.

By Mr. Butler: Very well, Captain, send them to the stenographer.

A. All right.

Note by the Reporter.—Exhibits sent in by the witness and filed October 18, 1926.

Q. Now, Captain, I want to ask you one other question about this Exhibit M offered in evidence yesterday. As I understand that, that was a survey of 1879-80, which is known in the record as the survey of 1882?

A. Yes, sir; it is known in this record as the survey of 1882 because it was in 1882 when the survey covered this particular territory.

Q. But the survey designated in your chart Exhibit M is the same survey, or known in the record or referred to as the Mississippi survey of 1882 by the Mississippi River Commission?

[fol. 233] A. Yes, sir.

Q. And while it shows upon its face it was the survey of 1879-80, that was when the survey of that section began and not when it was made at this particular place?

A. No; the dates there, "Made in 1879-80," was when the general survey began, but it was not completed for two or three years later.

Q. Yes, sir; that is what I am asking you.

A. Yes, sir.

Q. And this particular part of the river in question was surveyed in 1882?

A. In 1882.

Q. And so therefore, that survey is known in the record here as the survey of 1882?

A. Yes, sir; the dates, 1882, are shown on the face of the chart. For instance, this part of the survey out here was made on November 9, 1882. Just above there you will see November 8th. So there are two dates right there. They quit there on the night of the 8th of November and began there on the next morning. You will find those dates on there throughout the entire reach of the river, some running back to '79 in the upper reaches.

Q. As I understand you, your chart 17, Exhibit C and D [fol. 234] is shown in your Exhibit N on a very much enlarged scale and known by the Government Number as Sheets 45 and 46?

A. Yes, sir.

Q. Then you have pasted sheet 45 covering one section of the river to sheet 46 covering the adjoining section of the river together, and projected upon that the section, township and range lines?

A. Yes, sir; the Sheet 45, however, covers all of the territory in question. Sheet No. 46 is merely added there for information as to the radical changes that had taken place in the river to the south of the territory in question.

Q. It does not cover quite all of it, does it? Is not there where you pasted it together? Right there.

A. Yes, sir; that is right.

Q. This is Sheet 45, and it comes down here to the north end of Island 98? Do you see here, right there?

A. Yes, sir; the two sheets are put together so that you will have the whole thing before you, you understand, instead of having to try to adjust them on a table. They are put together just as one would have run into the other had both sheets been made on one piece of paper. They are adjusted by latitude and longitude.

Q. Both sections of that chart show the latitude and longitude?

A. Yes, sir.

[fol. 235] By Mr. Butler: That is all that I desire to ask Capt. West at this time. We want to reserve the right to recall him for further examination after these exhibits are filed.

A. Do you mean at some later date?

Q. Yes, sir.

A. But you are through with me at this present hearing?

Q. Yes, sir; for the present, Captain, we are through with the cross-examination, but later on, you understand, we may desire to recall you for further cross-examination.

A. I was trying to get information in regard to the matter so that I might get off by twelve o'clock.

(Witness excused.)

At this point a recess is taken subject to further notice, upon agreement of parties.

[fols. 236-238] IN THE SUPREME COURT OF THE UNITED STATES

VOLUME TWO, BEING TRANSCRIPT OF TESTIMONY OFFERED AND INTRODUCED ON BEHALF OF THE DEFENDANT, DECEMBER 4TH AND 5TH, 1926.

Be it remembered that on, to wit, December 4th, 1926, pursuant to notice by the Commissioner, Hon. Jack Thompson, the hearing of testimony in the above styled and numbered cause was resumed, after adjournment had on the 6th day of December, 1926. Said hearing and proceedings were had and held at Jackson, Mississippi, in the court room of the county court house of Hinds county, Mississippi, and all parties present as heretofore.

[fol. 239] By the Commissioner: As I recall, when we adjourned this hearing a short time ago counsel for the complainant announced that they had not rested, but would probably desire to introduce some more testimony. Have you any further testimony, gentlemen?

By Mr. Brandon: No, sir; not at this time. But complainant reserves the right to introduce further testimony.

OFFERS IN EVIDENCE

Whereupon, the defendant offered and introduced the following testimony, to wit:

By Mr. Creekmore: The State of Mississippi first offers a certified copy of the Land Assessment Roll of Issequena county, Mississippi, for the year 1848, covering the assessment of Sections 15, 16, 17, 18, 20, 21, 28, 29, 30, 31 and 32 of Township 9, Range 8 West, and Sections 36 of Township 9, Range 9 West, it being page 1 of the certified copy of or given by F. Birdsong, Chancery Clerk of Issequena county, under date of October 27, 1926.

We next offer page 2 of the same certified copy, which is the assessment roll of the same lands for the year 1850.

[fol. 240] We next offier page 3 of the same certified copy, which is the assessment roll of the same lands for the year 1853.

We next offer page 4 of the same certified copy, which is the assessment roll of the same lands for the year 1854.

We next offer page 5 of the same certified copy, which is the assessment roll of the same lands for the year 1861.

We next offer page 6 of the same certified copy, which is the assessment roll of the same lands for the year 1866.

We next offer page 7 of the same record or certified copy, which is the assessment roll of the same lands for the year 1870.

We next offer page 8 of the same certified copy, which is the assessment roll of the same lands for the year 1871.

We next offer page 9 of the same certified copy, which is the assessment roll of the same lands for the year 1875.

We next offer page 10 of the same record or certified [fol. 241] copy, which is the assessment roll of the same lands for the year 1879.

We next offer page 11 of the same certified copy, which is the assessment roll of the same lands for the year 1830.

We next offer page 12 of the same certified copy, which is the assessment roll of the same lands for the year 1884.

We next offer page 13 of the same certified copy, which is the assessment roll of the same lands for the year 1887.

We next offer page 14 of the same certified copy, which is the assessment roll of the same lands for the year 1887-8, the record not being clear as to the year.

We next offer page 15 of the same certified copy, which is the assessment roll of the same lands for the year 1889.

We next offer page 16 of the same certified copy, which is the assessment roll of the same lands for the year 1892, there appearing on the roll Island 98, not assigned to any section.

[fol. 242] We next offer page 17 of the same certified copy, which is the assessment roll of the same lands for the year 1896, showing that Island No. 98 was not assigned to any section.

We next offer page 18 of the same certified copy, which is the assessment rolls for the same lands for the year 1898, and showing that Island 98 was not assigned to any section.

We next offer page 19 of the same certified copy, which is the assessment roll of the same lands for the year 1900, Island No. 98 not appearing on this roll as Island 98, meaning there being no specific mention of Island 98.

We next offer page 20 of the same certified copy, which is the assessment roll of the same lands for the year 1902.

We next offer page 21 of the same certified copy, which is the assessment roll of the same lands for the year 1906.

We next offer page 22 of the same certified copy, which is the assessment roll of the same lands for the year 1909.

[fol. 243] We next offer page 23 of the same record, which is the assessment roll of the same lands for the year 1911.

We next offer page 24 of the same certified copy, which is the assessment roll of the same lands for the year 1913 and 1914.

We next offer page 25 of the same certified record, which is the assessment roll of the same lands for the year 1915 and 1916.

We next offer page 26 of the same certified copy, which is the assessment roll of the same lands for the year 1917 and 1918.

We next offer page 27 of the same certified copy, which is the assessment roll of the same lands for the years 1919 and 1920.

We next offer page 28 of the same certified copy, which is the assessment roll of the same lands for the year 1921 and 1922.

We next offer page 29 of the same certified copy, which is the assessment roll of the same lands for the year 1923 and 1924.

[fol. 244] We next offer page 30 of the same certified copy, which is the assessment roll of the same lands for the years 1925 and 1926.

We next offer page 31 of the same certified copy, which is the assessment roll of the same lands for the year 1925 and 1926, including the certificate of the chancery clerk, covering pages 1 to 31, page 31 showing the assessment of the same lands for the year 1926-27, and we will now ask the stenographer to mark the document as Defendant's Exhibit A, and it is submitted herewith.

We have only one copy of this exhibit at the present time, but we will, as soon as possible, furnish the counsel for complainant a copy thereof.

We next offer a certified copy, under the hand and seal of F. Birdsong, chancery clerk of Issequena county, Mississippi, of the record of sales to the State for taxes of Sections

15, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31 and 32, of Township 9, Range 8, East, and Section 36, Township 9, Range 9 West, and parts of them, for the years 1869 to 1926 inclusive, as shown by the records of lands sold to the State for delinquent taxes to Issequena county, Mississippi, and ask that such document be marked Exhibit B to the testimony of the defendant.

Document handed to the stenographer and marked Ex-
[fol. 245] hibit B to the testimony of the defendant.

We next offer a copy, certified under the hand and seal of F. Birdsong, chancery clerk of Issequena county, Mississippi, Order on Petition of J. M. Chilton, Lessee, praying for reduction of assessment of lands in Section 16, township 9, range 8 west, which order was entered by the Board of Supervisors at the August meeting, 1890, as shown by minute book E at page 608, and we ask that this certified copy be marked Exhibit C to the testimony of the defendant.

Document handed to the stenographer, and marked Exhibit C to the testimony of the defendant.

We next offer copy of the original entry of lands in Issequena county covering sections 11, 16, 17, 18, 20, 21, 28, 29, 30, 31, 32, of Township 9, North, Range 8 west; and all Section 36, Township 9, North, range 9 west, over the hand and seal of F. Birdsong, Chancery Clerk of Isssequena county, Mississippi, and ask that the same be marked Exhibit D to the testimony of the defendant.

Document handed to the stenographer and marked Exhibit D to the testimony of the defendant.

We now offer certified copy of Sectional Index of Issequena county, Mississippi, covering transfers of Sections 15, 16, 17, 18, 20, 21, 28, 29, 30 31 and 32 of Township [fol. 246] 9 North, Range 8 West, and Section 36, Township 9, North Range 9 west, and ask that the same be marked Exhibit E to the defendant's testimony. But the defendant requests permission to retain this for the purpose of sending it to the chancery clerk of Issequena county for certification, and to be returned to the stenographer to be filed as an exhibit in this case, by inadvertence the same not being certified to by the chancery clerk of Issequena county, Mississippi.

By Mr. Dale: This document is objected to by the complainant for the reason that it is not the best evidence of

the transfers recited therein, as the original deeds, or certified copies of the original deeds would be the best evidence.

By the Commissioner: Let it be admitted and marked as Exhibit E to the testimony of the defendant, and the stenographer will mark that ruling *is* reserved.

By Mr. Creekmore: We next offer a certified copy, under the signature and seal of George F. Blackburn, Clerk of the Court and Ex-officio Recorder of East Carroll Parish, Louisiana, being page 1 of Book of Entry of East Carroll Parish, Louisiana, covering Sections 1, 2, 3, 4, 5, 6, 7, 8 and [fol. 247] 9 of Township 19, North, Range 14 East, and ask that the same be marked Exhibit F to the testimony of the defendant.

By Mr. Dale: Complainant objects to said document for the reason that it does not show that it is the original book of Land Entries filed in this office.

By the Commissioner: Let it be admitted for the present, and the ruling reserved.

Document handed to the stenographer and marked Exhibit F to the testimony of the defendant.

By Mr. Creekmore: We now offer a certified copy of the Assessment Rolls for East Carroll Parish, Louisiana, for the year 1876, showing assessment against Mrs. Anna E. Newman, Administratrix, Willow Point, covering the East half of Fractional Section 2, all fractional sections 3, 4, 5 and 6, Township 19, Range 14. Also 40 acres of Section 55, Township 19, Range 13, showing the number of acres to be 719, and ask that the same be marked Exhibit G to the testimony of the defendant.

Document handed to the stenographer and marked Exhibit G to the testimony of the defendant.

[fol. 248] We now offer a certified copy of the assessment roll of East Carroll Parish, Louisiana, showing the assessment of Willow Point Plantation from the year 1880 to 1889, and ask that the same be marked Exhibit H to the testimony of the defendant.

Document handed to the stenographer and marked Exhibit H to the testimony of the defendant.

We now offer a certified copy of the assessment rolls of East Carroll Parish, Louisiana, showing the assessment of

Willow Point Plantation from the year 1899 to 1926, and ask that the same be marked Exhibit I to the testimony of the defendant.

Document handed to the stenographer and marked Exhibit I to the testimony of the defendant.

We now offer a certified copy of a deed recorded in Notarial Book Q, Folio 441-2, of the Records of East Carroll Parish, Louisiana, from Anna E. Newman to Walter A. Newman, dated the 26th day of October, 1882, and ask that the same be marked Exhibit J to the testimony of the defendant.

Document handed to the stenographer and marked Exhibit J to the testimony of the defendant.

We now offer a certified copy of tax deed recorded in Notarial Book T, folio page 554, et seq., from J. W. Dunn, [fol. 249] sheriff and tax collector, to J. S. Milliken, bearing date May 12th, 1894, and ask that it be marked Exhibit K to the testimony of the defendant.

Document handed to the stenographer, and marked Exhibit K to the testimony of the defendant.

We now offer a certified copy of a deed from J. S. Milliken to J. A. Craig, recorded in Notarial Book U, page 55 of the records of East Carroll Parish, Louisiana, and bearing date of May 6th, 1895, and ask that the same be marked Exhibit L to the testimony of the defendant.

Document handed to the stenographer and marked Exhibit L to the testimony of the defendant.

We now offer in evidence a certified copy of a tax deed from J. W. Dunn, sheriff and tax collector, to J. H. Gilfoil, Jr., to J. M. Hamley, recorded in Notarial Book X at page 203, of the records of East Carroll Parish, Louisiana, and bearing date of the 30th day of June, 1908, and ask that the same be marked Exhibit M to the testimony of the defendant.

Document handed to the stenographer, marked Exhibit M to the testimony of the defendant.

We now offer in evidence on behalf of the defendant a certified copy of power of attorney and deed from George

[fol. 250] I. Newman, Ernest Newman, Mrs. Florence B. Newman, and executrix of the minors, Clarence and Ed F. Newman, to Rufus F. Learned and Andrew B. Learned, recorded in Conveyance Record Book Y at page 155 et seq., of the records of East Carroll Parish, Louisiana, and bearing date of March 26, 1912, marked Exhibit N, defendant.

Recess until 2 o'clock P. M.

At 2 o'clock P. M. met pursuant to the above adjournment, and the introduction of testimony for and on behalf of the defendant was resumed.

All parties present as of this morning.

[fol. 251] Capt. H. M. Marshall, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Henry:

Q. State your name to the jury, Captain?

A. Horace M. Marshall.

Q. Where do you live, please sir?

A. Vicksburg, Mississippi.

Q. How long have you lived there?

A. Seventy-two years.

Q. Capt. Marshall, are you a graduate of any college, institution or university?

A. Yes, sir; I graduated in 1877 at the University of Virginia as civil engineer.

Q. How long have you been practicing the profession of civil engineer?

A. Practically ever since I graduated with the exception of four years when I managed a plantation from 1879 till 1882 inclusive.

Q. Where has your work been, your general work, since that time, Captain? On the Mississippi river, or where?

A. Mostly on the Mississippi river and tributaries of the Mississippi river in the employ of the United States Government, forty years, lacking twelve days.

[fol. 252] Q. During your employment with the United States Government, your entire time, with the exception of a short while on the Red River in Louisiana, has been at Vicksburg, has it not?

A. Yes, sir; at Vicksburg and the lower Mississippi delta.

Q. In your work as civil engineer with the Government tell the court whether or not it required you to familiarize yourself with maps, drawings and tracts, and the making of those, or having them made under your supervision?

A. Yes, sir; that was my job mostly—surveys and maps.

Q. This is a law suit between the State of Louisiana and the State of Mississippi, as is set out in the bill which has been filed by the State of Louisiana, which questions the title to a considerable number of acres of land. Have you discussed this law suit with the lawyers of the State of Mississippi and do you feel that you are competent to tell them what you have discovered in your investigations of it, Captain Marshall?

A. Yes, sir; if I understand you.

Q. I say, you have discussed it with the lawyers?

A. Oh, yes, sir.

Q. In the bill of complaint which was filed by the State of Louisiana, paragraph 3 states in effect that the large tract of land in controversy, fronting what is known as [fol. 253] Willow Point and adjacent property—where is Willow Point as shown on the map?

A. In the southeast corner of East Carroll Parish, Louisiana.

Q. And what relation has that to the county in Mississippi?

A. It is opposite the southwest corner of Issequena county, Mississippi.

Q. Of Issequena or Warren?

A. Issequena. It is the northwest corner of Warren county, Mississippi.

Q. That is it. You know we get confounded now and then. Can you show by the maps of Louisiana and Mississippi where the lines would coincide and meet in the river?

A. The township maps on two sides of the river will show the land in the State of Louisiana and in the State of Mississippi opposite each other.

Q. You have examined them have you not?

A. Yes, sir.

Q. This map I have handed you?

A. Yes, sir.

Q. I will ask you to please present that map and let it be marked Exhibit No. 1 to your testimony.

A. Exhibit No. 1 seems to be "Louisiana Exhibit A."

Q. Go ahead?

[fol. 254] A. Exhibit No. 1 or Louisiana Exhibit A shows Tullos Island in Mississippi, Township 19, Range 13, and 14 East in Louisiana is Exhibit No. 2 to complainant's testimony. I offer this as Exhibit No. 1 and Exhibit 2 Township plat in Mississippi and Louisiana, marked Exhibits Nos. 1 and 2, Marshall.

Q. How does the Mississippi river appear as shown on the township map in Louisiana and township map of Mississippi—what does it show?

By Mr. Dale: That is objected to by the complainant. The map is the best evidence as to what it shows.

By Mr. Henry:

Q. All right, tell what they show?

A. The township plat of Mississippi shows the bank line in Mississippi as run out at the time of the survey. It shows the bank line in Mississippi as sketched on the township map. In Louisiana it is just vice versa.

Q. In other words you mean that it does not show the same thing?

A. The bank line in Louisiana shown on the Mississippi township plat is not the same as the bank line in Louisiana shown on the township plat for Louisiana. The bank line in Mississippi shown on the township plat is not the same as the bank line of Mississippi shown on the township plat in [fol. 255] Louisiana. In other words, the rover is not the same as shown on the two maps.

Q. Under paragraph 4 of the complainant's bill the statement is made that "The land on the Mississippi river in the state of Mississippi opposite the Willow Point," and so forth and so on, "gradually wore away by errosions, caved into the Mississippi river and disappeared, while the shore of the Mississippi river on the Louisiana side at Willow

Point and adjacent property was gradually extended eastward and in an easterly direction by accretions formed successively and imperceptibly to the soil of said shore until it extended easterly to about the distance of approximately five miles from the original Louisiana shore." Is that a fact?

A. No.

Q. Please discuss that and show why it is not a fact?

A. The Mississippi survey was made in November, 1823. In Louisiana it was made in February and March, 1824. There was no other map—no other survey made of the shore line in the two states until 1882, when the Mississippi River Commission map was made.

Q. Where is that shown?

A. On Exhibit 3, Sheet 17 of the Mississippi River Commission. That shows that there was another island on the Mississippi side of the Mississippi river, Island No, 98, which is the same thing as Tullos Island, the island above [fol. 256] that, up stream, on the Mississippi shore.

Q. Was the island up above that, below the head of Island 98?

A. Yes, sir; below the upper end. They overlap. Those two islands overlap a little.

Q. What is the next map you have showing the change of the channel of the Mississippi river at or about Tullos Island or Island 98?

—. The next map is Exhibit 4 to my testimony, three blue prints sheets of surveys of the Mississippi river Commission, certified by the Secretary of War as being correct and official maps.

Q. And they have been marked as to your testimony how?

A. Exhibit 4. There are three sheets, A, B and C.

Q. State what Exhibit 4 shows according to your interpretation of the map?

By Mr. Dale: That is objected to on the ground that the maps are the best evidence and show for themselves.

By Mr. Henry:

Q. Please state what Exhibit 4 shows according to your interpretation of the map?

A. Exhibit 4-A, in the upper right hand corner, shows high ground, an elevation of 110, Memphis data. The line [fol. 257] running around the high ground shows the timber line. This high ground is on the western side or towards Louisiana of the Mississippi river. This 4-A is sheet No. 6 of the blue print issued by the Mississippi River Commission, certified by the Secretary of War. It is joined to Sheet 5½ of the same survey and blue print marked Exhibit 4-B. On that 4-B the high ground extending down the river with the timber line marked thereon. Sheet 5½ of 4-B is continued down the river on Sheet 5. This sheet shows a continuation of the high ground down the Mississippi river with the timberline marked thereon. On these three sheets elevations are written, referring to Memphis data. They give the heighth of the ground. The heighth of the ground, as I have stated, is 110 at the upper end, and——

Q. (Interposing.) The upper end of what?

A. The upper end of the island. And it runs off down to various numbers, 104, 108½, 107.4, 104.3, 109.5—various numbers. That is on the high ground.

Q. That is Tullos Island you are talking about?

A. Yes, sir. To the west and at the upper end of Tullos Island are various numbers, giving the elevations,—86.4, 86, 89, 85, 86, 90, which, it will be noticed, the 90 is 20 feet lower than the 110. On the lower end of Tullos Island, the figures written to the west of the Island, run 81, 85, 82, 84 and 95. On these three sheets the shore line of 1882 is [fol. 258] marked along the western limits or western edge of Tullos Island. On the Louisiana side the bar line of 1882 is marked. To the east of this Island is shown the channel of the Mississippi river at the time this survey was made in 1894.

Q. Is there anything else shown on that map, Exhibit 4, A, B and C which would indicate the change of the main channel of the Mississippi river?

A. The fact that the island elevation is over 100, which is about the elevation of the bank line on the Mississippi shore. The location of the channel of the Mississippi River east of that high land shows that the river had gone around the upper end of the island and was flowing to the east of the island.

Q. Does that show that the island was washed away or still there?

A. The island could not have washed away.

By Mr. Dale: We object to that as a mere opinion of the witness, and as not shown by the survey referred to, and that he had no personal knowledge of the matter, and this objection is made generally to all similar testimony, and the maps themselves are the best evidence.

By Mr. Henry:

Q. I understood you to say that the bank line elevation and the island elevation is about the same?

[fol. 259] Q. As shown by that map?

A. Yes, sir.

By Mr. Butler:

Q. I want to know if your map, Exhibit 4, shows the same character of detail as the Mississippi River Commission map of 1882?

A. Yes, sir; the same detail. It is the shore line elevation of the bank, the timber line and the soundings in the river. The character of the survey is exactly identical as on the survey of 1882. That is the survey there of 1882 there.

Q. It is marked here Exhibit M to the testimony?

A. Yes, sir.

Q. And also sheet 45 and 46?

A. Yes, sir; they are two pasted together.

By Mr. Henry:

Q. I don't know whether you have stated it or not, but is there anything else shown on the map which would indicate the change of the main channel of the Mississippi River?

A. The fact that the island elevation shows a reading of 110 feet, and the water survey on the shore line shows a reading of 60 feet, is absolute proof of the fact that the island was 50 feet above the water surface at the time of the survey, with trees growing on top of it. I can state of my own personal knowledge that in 1890, four years before the survey was made, that Island 98, or Tullos Island, the island above it, had not been washed away, but

was still in existence. Of course, everybody knows that [fol. 260] an island can not be washed away and then four years later be built back with big trees growing on it, as shown by this survey. There is another thing I want to show you. Up stream from this island shown on Exhibit 4-A, and westward to the Louisiana side, the elevations of the ground surface are 20 feet lower than the elevation of the island, that is, the ground west of the island is 20 feet lower than the surface of the island. This low ground to the west of the island is in the location of the Mississippi river in 1882, which shows that the Mississippi river had gone around the head of the island and over to the east, and a bar had formed from the Louisiana side over to the head of the island. If the island had washed away and the accretions made from the Louisiana shore, this low ground could not have occurred if the Mississippi river had gradually moved over towards the State of Mississippi, building an accretion on the Louisiana shore. That accretion would have been adjacent—would have been higher adjacent to the Louisiana shore, and lower as the accretions were formed from year to year towards the Mississippi shore.

By Mr. Dale: The complainant objects to the foregoing answer in its entirety, because it was not made in response to the question, but vice versa, was read from a carefully and previously prepared statement, which was made by the witness prior to his being introduced and put on the [fols. 261-270] witness stand.

By Mr. Henry:

Q. They object to this because you read from it. Tell the Court whether or not that is your declaration, and whether you made a preparation of the case in the office of the attorney, among the attorneys who represent the state of Mississippi?

A. Yes, sir; I had begun—I wrote it all out myself, and then, in consultation with the attorney representing the State of Mississippi, in Vicksburg, I dictated this statement, and it was taken down by the stenographer there.

Q. Is it correct?

A. It is correct exactly as I said it. I have gone over it and corrected it.

Q. Are you hard of hearing, Capt. Marshall?
A. Yes, sir; and it is a plumb nuisance.
Q. This statement is correct?
A. Yes, sir.
Q. Please state to the Court what you were doing up there when you personally observed that condition, and what you saw?

A. In 1890, during the high water I was in charge of the levees from R. E. Foster's place down to the end of the Mississippi River District at Brunswick. I rode the levee day and night, and stayed at different houses. In this immediate Vicinity I stayed with Jack Chilton and [fol. 271] his brother, John Chilton. One morning while there I went out with Jack Chilton to meet the mail boat, which came up the chute, on the eastern side of Tullos or Island 98, and landed against the levee and put off the mail for Jack Chilton. He was postmaster at Albemarle at that time. There was two islands, with the chute running down between the two. While we were there and the mail boat passing up the chute side, an Anchor Line boat passed down the main channel on the western side of both islands. There were trees growing on both the islands, large cottonwood and willow. There was a swift current flowing down between the two islands and a channel to the east of both islands. Without being able to say how wide it was, it was possibly 100 feet wide—enough for the mail boat. The mail boat was the Issequena—and it was wide enough for the mail boat Issequena to go up through that chute next to the main shore.

Q. Was the mail boat a light draft boat or a heavy boat—a big boat?

A. She was a large boat. As I said, it was in time of high water.

Q. So far as you know, and as you are advised, is Jack Chilton living or dead?

A. I think they are both dead—John and Jack Chilton are both dead.

[fol. 272] Q. The levees of which you had charge, tell the Court what county or counties those levees were in?

A. That was in the Lower Mississippi Levee District. That levee was under my charge, and was in Issequena

county. I will state that it was at Albemarle Landing, immediately adjacent to Tullos Island, or Island No. 98.

Q. All right. Go ahead?

A. I have prepared a tracing made from blue prints—from the three blue prints shown as 4-A, B and C, so as to put the river in that vicinity on one drawing and have marked the tracing Exhibit 4-A, B and C, on the lower right hand corner.

Q. All right, what does that show?

A. It shows in a clear way then what I have stated with regard to the blue prints. It is, as far as it goes, a fac simile copy of the lines and figures on those three sheets 4-A, B and C. On that tracing, which is on a scale of 1 to 10,000, the scale on which the Mississippi River Commission surveys are platted in the St. Louis office—on these tracings I have drawn the section lines in this vicinity, showing sections 16 and 17 and some of 20, 21 and 28, covering Tullos Island as Island 98 and the Mississippi adjacent shore. Also on that tracing I have marked two lines in blue pencil, along which I have written the north border of sheet No. 5 and the southeast border of sheet No. 6, so that these tracings may be fitted over the blue print sheets to [fol. 273] show that they identical.

Q. You say the blue print sheets are what?

A. They are 4-A, B and C.

Q. From that then what, if anything?

A. In order to reduce this survey sheet 4-A, B and C from the 1 to the 10,000 scale to the 1 to 20,000 scale, which is the scale on which the maps of the Mississippi River Commission are printed, I have prepared a tracing reduced to one half size, otherwise identical with the tracing of Exhibit 4-A, B and C. This second tracing is marked in the lower right hand corner, "Reduced from Exhibit 4-A, B and C."

Q. What does it show?

A. The same thing. It is a fac simile of the other tracing except as to size. It is one half the size.

Q. You will call that exhibit what?

A. I will call one Exhibit 4-D and one 4-E.

Q. Please refer to the blue print which is marked Exhibit I to the State of Louisiana, complainant, which is a map by Capt. C. H. West, and state what that shows?

A. The most striking thing on there is the word, "accretions," which is written on the bar, showing between the bar line of 1894 and the bank line of 1866.

Q. You have read Capt. West's testimony, have you?

A. Yes, sir; I read his testimony.

[fol. 274] Q. Tell the Court, if you can, where Capt. West got his data to draw this? This blue print?

A. Because it shows the Mississippi river in the location of 1894, as it states on its face, showing the Mississippi river bank in 1894. This Exhibit I to West's testimony is made from the Mississippi River Commission's survey of 1894 or from Sheet 17 of the Mississippi River Commission, one inch to the mile scale, with the red lines of 1894 superimposed on it.

Q. Superimposed on the 1883 map?

A. Yes, sir. That is shown, I think, on the 1883 map. The scale of Sheet 17 was one inch to the mile, and the scale of Exhibit I is 1 to 20,000, which is the scale of the Mississippi River Commission printed sheets.

Q. Judge Dale has just suggested to me that it was 1882 instead of 1883.

A. Sheet 17—let me explain. Those small sheets, one inch to the mile scale are made up from 1 to 20,000 sheet scale. The one there, 20,000 sheet scale, is from the actual survey in the field, and the dates on those sheets is given, the time of the survey. The smaller sheet, one inch to the mile, is made usually the next year. So that for 1882 the survey made equals 1 to 20,000, and the next year comes out the sheet 1 inch to the mile,—the following year. One was made in 1882 and the following one was made in 1883.

[fol. 275] By Mr. Butler:

Q. Is there anything in the Mississippi River Commission's Survey of 1894 that would justify designating this land on Exhibit I as accretions?

A. No. I have stated practically everything that was on the 1894 survey sheets, 4-A, B and C. I stated on there everything that is cognizant to this question, and there are no accretions marked there. I have studied them all, and there are no accretions marked there—bar line, timberline, high ground, low ground—nothing said about accretions.

By Mr. Henry:

Q. State whether or not the 1884 survey map of the Mississippi River Commission shows the island, and sheet No. 17 shows the upper part of Island No. 98 or Tullos Island with the island above on the west, the bar line of 1894 on the western shore?

A. Yes, sir; the bar line is on the western shore of the Mississippi river. I will state it the other way around. The river is the eastern end of the island.

Q. Where is the island shown?

A. The island is shown on the 1894 map which you have asked about.

Q. And you say that the only place that Capt. West could have gotten the blue print which he made was from the survey of 1894 and the survey of 1883?

[fol. 276] A. Yes, sir.

Q. Go ahead now, Captain Marshall?

A. On the western side of the channel of the Mississippi river marked on Exhibit I, "Mid river distance, Mississippi—Louisiana," at the spot where Capt. West wrote "accretions," appears the location of the low ground shown on sheets 4-A, B and C, which I have previously described.

Q. That is shown by placing your Exhibit 4-E over Exhibit I?

A. Yes, sir; with the section lines on 4-E fitting over the section lines on Exhibit I.

Q. Does any other drawing or map which you have seen, except this map, or No. 3 of C. H. West, lose sight of the Island?

A. No, I have not seen any of the maps except the Mississippi River Commission maps which have been under discussion, the 1 to 10,000, 4-A, B and C, the one inch to the mile, 17, Exhibit 3, those are the only maps that I know of, except the one issued with the superimposed lines on Sheet 17 showing the 1894 line, from which, I presume, Capt. West prepared his Exhibit I. None of those shown was accretion, and none of them have the island left off. The Sheet 17, 1 inch to the mile, with the superimposed red line of 1894, shows the lower part of the upper of the two islands, and the upper part or the lower of the two islands, or Tullos [fol. 277] Island, surrounded by the red line to the west of the Mississippi river.

By Mr. Butler:

Q. What is this paper here?

A. This is a blue print of the Mississippi River District map of Albemarle Bend, Levee Board, showing changes in the channel from 1882 to 1896. It comes out of Greenville, Mississippi, and is dated April 5, 1906, with the name of C. H. West, Chief Engineer, scale 1 to 20,000. Having read Capt. West's testimony, I will state that this is the blue print from the map that he prepared to show the caving that had taken place in Albemarle Bend. In his testimony he refers to this map.

By Mr. Butler: We offer Mississippi Levee District Map of Albemarle Bend, L-B 567-572, showing changes in the channel from 1882 to 1906, by C. H. West, Chief Engineer, dated at Greenville, Mississippi, April 5th, 1906, as Exhibit No. 5 to the testimony of this witness.

By Mr. Dale: It is objected to by complainant for the reason that the document offered is a blue print, and the loss of the original has not been shown; nor has it been shown that the original could not be produced, and it is not certified to.

[fol. 278] By the Commissioner: Let it be identified by the stenographer as Exhibit No. 5 to the testimony of this witness, and it will be admitted, for the present, subject to the objection of counsel for the complainant, to be passed on later.

By Mr. Butler:

Q. Go ahead and tell us about that map?

A. It shows, as it states on its face, the locations of the levee from time to time between 1882 and 1906.

Q. On the Mississippi side?

A. On the Mississippi side, in the Lower Mississippi Levee District, in the vicinity of Island No. 98. The date that each levee was built is written along the line showing the location of the levee when it was built.

Q. How are the levee lines represented as shown on that map?

A. White continuous lines drawn with irregular angles. The lines represent the actual location on the ground when shown on the map of this scale on that blue print, because of

the almost indecipherable figures I have written adjacent to each, here and here in red keel. I have not obliterated any of the original figures,—merely putting in some figures so as to make it more clearly readable. Even that does not make it as clear on the drawing as is desirable. Therefore, I made a tracing, a fac simile, from this blue print, with the same lines as shown on the blue print, and the same [fol. 279] numbers for the years written along the lines of the levee.

Q. Will you mark that tracing as Exhibit No. 5-A?

A. Yes, sir.

By Mr. Dale: We will withdraw our objection to the blue print, but complainant objects to the introduction of the Exhibit 5-A for the same reason which was made in the general objection previously, and to all similar testimony. Our objection also to Exhibit No. 5-A is that it only partially shows the facts.

By the Commissioner: Let the objection be noted and the exhibit will be admitted for the present, subject to the objection, and a ruling made later.

By Mr. Butler:

Q. Now, just go ahead and explain what Exhibit No. 5 and No. 5-A shows with reference to the caving and movement of the river?

A. From the dates shown of the location of the levee in 1882, with the numbers written along the line, in 1883 it shows what is called the run around of the levee, opposite where the chute passed on the north side of Island 98, showing that between 1882 and 1883 there had been caving on the main shore along the bank of the chute at the upper end of Island 98. That caving was necessarily due to the flow of the water down through that chute. The next year, 1883 and [fol. 280] 1884, a run-a-round was built on the Mississippi levees adjacent to the lower end of the chute, to the east of Island 98. It is marked 1883 and 1884. There it is on there. The next is a levee built in 1888 and 1889 on an extensive run-a-round, at the upper end of the island, adjacent west of Island 98, in the location of Duvall's landing. In 1889 a small run-a-round was built above Duvall's. In 1890 a run-a-round was built from the run-a-round of 1888

and 1889 down to the run a-round of 1883, showing that caving had progressed towards the northeast of Island 98 and the adjacent island, and that it continued as shown by the successive dates, 1894, 1895, 1893, 1895 and 1896 and 1897. There is another one here, 1892, running from the 1890 extention down to the middle of the 1883-1884 run-a-round. The location of all of these levees shows undoubtedly that the river had caved north and east of Island 98. From the location of the levees up to 1890 I have drawn the approximate location of the bank of 1894 on the Mississippi side, and following Capt. West's rule to allow the usual width of the river I have also drawn the line showing the west shore of the Mississippi River in this locality. That location of the river, to all appearances, coincides with the location of the 1894 shore lines, shown in red, superimposed on Sheet 17 of the Mississippi River Commission, which was offered [fol. 281] in evidence in this case on the complainant. This blue print, 5-A, states that it is made up, or rather it shows the shore line of 1882, and the Island 98 with the chutes to the east of those islands. When these tracing of these levee lines is superimposed, it shows superimposed on Exhibit 5, it shows that chute as it formerly was—which was formerly on the eastern side of Island 98, was within the bed of the river in 1896.

Q. And it shows, as I understand you, that the chute to the east of Island 98, in 1896, had come to the channel of the river?

Objected to as leading: ruling reserved.

A. The chute is within the lines of the river. The former chute is within the lines of the river in 1894. If I said 1896 anywhere it is off. You said 1896. All of this shows that the chute on the eastern side of Island 98 had simply been enlarged, and the islands were there in 1890, because I saw them, and the islands were there in 1896 by evidence of enlargement of those chutes.

Q. Does Island 98 appear on your Exhibit 5?

A. Yes, sir.

Q. On that map Island 98 is on the Louisiana or the western side of the channel of the river?

A. Yes, sir; the river had gone around, making over and over the same thing.

[fol. 282] Q. Capt. Marshall, I hand you some papers marked Exhibit- 6-A, B, C and D, and will ask you to tell me something in a general way, what they are, and I want to offer them in evidence.

A. They are certified copies of maps made by the Mississippi River Commission of 1883, sheet 17, 1882, sheet 45 and sheet 46, 1913, and 17 sheet 47. The last named three sheets are scaled 1 to 20,000, approximately three inches to the mile. In addition——

By Mr. Dale (interposing): Let me make an objection right there.

By Mr. Henry: Wait until he finishes his answer, Judge.

By Mr. Dale: Very well.

By Mr. Butler:

Q. What else, if anything, is there on those maps?

A. One moment, please. Give me A, B, C and D. Exhibit C is a letter from the Assistant Engineer stating where the section and range lines cross the levee in the vicinity of Albemarle. There is a tracing——

Q. (Interposing.) Have you superimposed any lines on those Mississippi River Commission maps?

A. Yes, sir; on this Mississippi River Commission sheets I have superimposed lines in red keel, showing the sections [fol. 283] with the various numbers written on them. The purpose of this letter, Exhibit 6-E, was to locate those section lines on the sheets from the surveys made by the Mississippi Levee District. Having the station numbers on the levees, I merely had to draw the section lines where they crossed the levees, and stated by the letter.

Q. That is all you desire to say about that, is it, Captain Marshall?

A. Yes, sir.

By Mr. Butler: We now offer in evidence these exhibits.

By Mr. Dale: Objected to by the complainant for the reason there are a lot of red lines imposed, as stated by the witness, on the Mississippi River Commission's survey, and they are not shown to be correct, and constitute an alteration of the map to that extent.

We object to the letter purporting to be from the Assistant Engineer of the Board of Mississippi Levee District to

the witness, as there is no proof of the signature of this gentleman as to its genuineness, and it is not sworn testimony, and complainant has had no opportunity of cross-examinaing the said engineer, and testimony by letter is incompetent and irrelevant.

By Mr. Butler:

[fol. 284] Q. Have you superimposed the section lines on the maps referred to in the same way that Capt. West superimposed them upon his Exhibit M?

A. The same way, and practically identically in the same location.

Q. Go ahead now and explain it.

By Mr. Dale: We make the further objection to the tracing marked Exhibit- 6-D to 6-E, as it is not made from an original survey; it is not certified to, or shown to be correct.

By the Commissioner: Let the objection of counsel be noted; that the ruling is reserved, to be passed on at a later time.

By Mr. Butler:

Q. Go ahead and make your explantion of those maps, Capt. Marshall?

A. The section lines in red, drawn or superimposed on Sheets 45 and 46 of the Mississippi River Commission, have been drawn off in the form of a tracing. The tracing fits the map and shows the shore line of 1882—the shore line of the Mississippi River—in 1882, along the island next above Tullos Island; the 1882 bar line on the Louisiana shore, and the mid-channel line in 1882 between Mississippi and Louisiana forming the boundary to the west of Island 98 and above it, and to the east of the bar line of [fol. 285] 1882, making the location. This tracing, when superimposed and placed over 47 of the 1913-15 survey, scale 1 to 20,000, with the section lines from the survey on one did coincide with the section line of the survey of the other date—of the later date, and shows the same boundary line just previously stated between the State- of Louisiana and Mississippi in 1882 was within the channel of the Mississippi river, as shown in 1913-15. Practically the center

line is co-incident. This means that the Mississippi River, in 1882, was in the same location as the cut-off shown in 1913 and '15; that the Mississippi river merely had gone back down the old channel which was shown still there twenty feet lower than the island at the upper end, and 25 or 30 feet lower than the island at the lower end in the 1894 survey on 4-A, B and C.

Q. Has this tracing been marked as an Exhibit?

A. No.

Q. I will ask you to offer as Exhibit 6-F to your testimony this tracing that you have just testified about?

A. Yes, sir.

Document handed to the stenographer and marked Exhibit 6-F to the testimony of this witness.

Q. Now, this tracing which you have offered as Exhibit 6-F to your testimony, simply reduces to one sheet the information shown on this Mississippi River chart as to the channel of the river and the location of the banks, and so forth?

[fol. 286] A. This tracing is made from the 1882 survey, but when it is placed on top of the 1913-15 survey with the sections coincident, shows that the channel of 1882 was in identically the same location as the channel in 1913-15.

Q. I now hand you Exhibits 7-A and 7-B. What are they, Capt. Marshall?

A. Those are Blue Prints of the sheets made by Capt. West, marked Map No. 4, which is 7-A, showing the Mississippi River, with the cut-off in 1912 and 1913.

Q. What is Exhibit 7-B?

A. The 7-B is Township 19, Range 8 west, Issequena county, Mississippi, showing the river bank in 1882.

Q. Made by Capt. West?

A. Yes, sir. Scale 1 to 20,000.

Q. And marked Map No. 2?

A. Yes, sir. Exhibit A Map No. 4, made by Capt. West, the same date, shows the river bank in 1913. I have here a tracing of these maps made by Capt. West that are identical.

Q. Marked Exhibits 3 and 5 to the cross-examination of Capt. West?

A. One is Exhibit 5 and the other is Exhibit 3. These last two are the tracings from which the blue prints were

made, that were sent to me by Capt. West. When placed one over the other so that the sections coincide, the mid-river distance on the Exhibit 3 is right down the middle [fol. 287] of the channel shown on Exhibit 5, confirming comparisons that I made on Sheet 45 and Sheet 46 of 1882 with Sheet 47 of 1913-15.

Q. If the river had gradually eaten away the Mississippi side, and had caused accretions to form from the Louisiana side across to the Mississippi side, is it probable that the river bed of 1813-15 would have been in the river bed of 1882?

A. Of course, everything is possible.

By Mr. Dale: Objected to by complainant as incompetent evidence, being purely and solely the opinion of the witness, without any reason for said opinion.

Ruling reserved by the Commissioner.

A. I have stated the facts as shown by the 1894 survey, with the old bed partly filled up with sand twenty to thirty feet lower than the top of the land on the island. I have shown that the channel filled up with sand was identically in the same location of the channel in 1882; and I now here show that the channel of 1882 is in identically the same location as the channel in 1913-15. Now, put the three together.

Q. Now, have you made that showing from the maps of the Government?

A. From the official maps of the Mississippi River Commission.

[fol. 288] Q. Will you give in detail your various positions with the United States Government; how long in each position, and where, and your duties in connection with those positions, and your other experience as a civil engineer?

A. I started out by saying that I graduated in 1877. I came back to Vicksburg and was employed on the survey of the Vicksburg harbor. The survey was made under employment of the City of Vicksburg, but it was made for the purpose of submitting to the United States Engineers with a view of restoring the harbor of the City of Vicksburg by diverting the Yazoo River down through Chickasaw Bayou, or otherwise.

Q. Tell how long you worked there.

A. Nothing was done because the Yazoo River entered the Mississippi River about five miles above Vicksburg, and from time immemorial the mouth of the Yazoo River had been stopped up, practically unnavigable in time of low water. The Board of Engineers decided that if the Mississippi River could not keep its own mouth open, it could not keep the canal open in front of Vicksburg. I then went over on railroad work. I was employed——

Q. (Interposing.) How long were you on the harbor work at Vicksburg?

A. That was only about nine months. That survey was only about nine months, and then I went off on other work. [fol. 289] I went on railroad work in Coajoma county and located fifty miles of the Yazoo & Mississippi Valley Railroad through Coahoma county from Carnes down to Bobo, and supervised the building of about half of that. I then went on the levees in the upper Mississippi Levee District, from Memphis down to Sunflower Landing. I was there about a year. Of course, these things are all approximate. I then went back to Vicksburg and was employed in the Vicksburg United States Engineer's office from September, 1884 until April, 1885. I next made a sectional index for all of the deeds in Warren county in the City of Vicksburg. That took me a year. I then went back on the levees in the Upper Mississippi Levee District in Tunica county and stayed there about a year. I then went over on the railroad and located a railroad from Memphis to Pine Bluff, in Arkansas. I then went down on the levees in Arkansas in Cluco county. I stayed there about a year, and then went back to Vicksburg and was employed in the United States Engineer's office in 1888. I was continually employed in the United States Engineer's office at Vicksburg from 1888 until 1924, when I was retired. While in the United States Engineer's office I had charge of the survey of the Yazoo River at the mouth, with a view to turn Yazoo in front of Vicksburg and restore the harbor, the same work virtually that I was first employed on in 1877. In the re- [fol. 290] port on that survey I stated that the Yazoo River entered the Mississippi River on the bar side, where the Mississippi continually made up the bar,—filled it up at every high water, and that when the Mississippi fell the Yazoo had to wash that sand away. The task was so great

that in the falling of the Yazoo river, by the time the sand was washed out the low water season was over. That it might have been no provocation in low water through the mouth of the Yazoo where it was proposed to bring the Yazoo River down in front of Vicksburg, the Yazoo would enter the Mississippi River on the channel side where the Mississippi did not make any deposit. All of the caving of the bank was carried from the channel side over to the bar side in the river, consequently the Yazoo River would not have to keep its mouth open. It would always stay open. That was adopted. The plans called for an expenditure of $1,200,000.00. The work was carried out within the estimate, the only work of a million dollars that ever was executed by the United States Government within the estimate. You have asked me to give a history of my life. I then went over on Red River and had charge of the surveys for the improvement of Red River from Fulton, Arkansas to the mouth. That extended over seven or eight years. I made plans for the improvement of Red River, for which no appropriation ever was made. The estimate was ten million dollars. I was then put in charge of the Oashita River to pull logs and dams from the river from [fol. 291] Camden to the mouth. I made a survey and made plans for the improvement of the river and went to Washington and appeared before the Rivers and Harbor Committee and explained the project. Money was appropriated. Locks have been built, and I am sorry to say they did not come within the estimate. After that I was in general charge of the snag boat, cleaning out the River Yazoo, the tributaries of the Yasoo, the Red River and its tributaries, and others, and in 1908, 9 and 10 I had charge of a repetition of the survey of the Red River. I think that is about enough.

Q. Did the duties of your employment with the Government require you to famili-rize yourself with the characteristics of the Mississippi river, and its trend, and so forth—the caving of its banks?

A. Yes, sir.

Q. State whether or not your work required you to do those things, and to what extent?

A. Yes, sir; my work on the rivers has been everything pertaining to the improvement of the rivers.

Q. And to the construction of levees?

A. Construction work, to the operation of all of the boats on the river.

By Mr. Butler: That is all. You may cross-examine the witness.

[fol. 292] By Mr. Dale: We do not care to ask Capt. Marshall any questions. He may stand aside.

(Cross-examination waived and witness excused.)

By Mr. Brandon: We desire that a note be made here that all exhibits put in by Capt. Marshall in his testimony, copies are to be furnished us by the defendant.

By Mr. Butler: Yes, sir; I understand that the State of Mississippi will undertake to furnish copies.

Recess until 9 o'clock A. M. December 4, 1926.

[fol. 293] Jackson, Miss., Dec. 4, 1926.

Met pursuant to adjournment at nine o'clock A. M. and all present as of yesterday. The defendant resumed the introduction of its proof.

OFFERS IN EVIDENCE

By Mr. Creekmore: The defendant offers in evidence a photostatic copy of a map of reconnaisance of the Mississippi River, made by Maj. Charles R. Suter, Corps of Engineers of the United States Army, made in accordance with the Act of Congress, approved June 23, 1874, and will ask that the same be marked Exhibit O to the testimony of the defendant.

By Mr. Dale: We object to this document for the reason that it is not certified to as a correct copy of any map in existence, and there is no proof of its correctness or accuracy; that the original from which the photostatic copy purports to have been made was not certified to.

By the Commissioner: Let it be marked and admitted subject to the objection made by counsel, and ruling reserved.

Document handed to the stenographer and marked Defendant's Exhibit O.

[fol. 294] By Mr. Creekmore: We now offer a photostatic copy of the survey of the Mississippi River made under the direction of the Mississippi River Commission, being Chart No. 45, and ask that it be marked as Defendant's Exhibit P.

By Mr. Dale: Complainant objects to the introduction of this document for the reason that it is not certified to, and neither is the original copy certified to from which it was made, as a correct copy from which this photostatic was made.

Document handed to the stenographer, marked Defendant's Exhibit P, and is admitted in evidence with ruling reserved on the objection.

By Mr. Creekmore: We offer in evidence a photostatic copy of Chart 46 of the same survey as last above, and ask that it be marked Exhibit Q for the defendant.

By Mr. Dale: Complainant objects to the same for the reason that there is no evidence that the original, from which this purports to be a photostatic copy, is correct, and is not certified to, and there is no proof of the authenti-ty of this copy.

[fol. 295] Document admitted in evidence subject to the objection of counsel, handed to the stenographer and marked Exhibit Q.

By Mr. Creekmore: I desire to state to counsel that before the record is made up, if they insist on these photostatic copies being certified to, and they will let us know, we will have it done.

We next offer Sheet No. 47, Survey of the Mississippi River, made under the direction of the Mississippi River Commission in 1913 and 1915, and ask that it be marked Exhibit R.

By Mr. Dale: We make the same objection on behalf of the complainant.

Document marked Exhibit R for the defendant, and admitted subject to the objection.

By Mr. Creekmore: We next offer a photostatic copy of chart of the Mississippi Levee District from Concordia to

Wilson's Point, showing location of levee in June, 1890, made by William Starting, Chief Engineer, initialed and numbered M R C 45, and ask that the same be marked Exhibit S, the same consisting of two sheets brad-ed together. [fol. 296] By Mr. Dale: Let the record show we make the same objection to this document also as to the others.

Document handed to the stenographer and marked Exhibit S, and is admitted subject to the objection of counsel.

By Mr. Creekmore: We offer a photostatic copy of tracing of controlling levee line of Third Levee District, corrected to June 30th, 1896, initialed M. R. C. No. 608, and ask that the same be marked Exhibit T, this exhibit consisting of two sheets fastened together.

By Mr. Dale: We make the same objection to this document also.

Document handed to the stenographer and marked Exhibit T and is admitted subject to the objection.

By Mr. Creekmore: We now offer a tracing of the Mississippi Levee District showing existing and abandoned levee lines and recent and 1882 bank lines, dated December 14th, 1901, by Capt. C. H. West, Chief Engineer, and ask that it be made Exhibit U, the same consisting of two sheets.

By Mr. Dale: Note the same objection to this document as we made to the others.

Document handed to the stenographer and marked Ex- [fol. 297] hibit U for the defendant. Ruling on objection reserved by the Commissioner.

C. F. Hume, called as a witness on behalf of the defendant, was sworn and testified as follows:

Direct examination.

By Mr. Creekmore:

Q. What is your name, please sir?
A. C. F. Hume.
Q. And your age?
A. I am in my sixty-third year.
Q. Where do you live?

A. Northeast of Edwards, Hinds county, five miles.

Q. Edwards, Hinds county, Mississippi?

A. Yes, sir.

Q. Did you ever live at or near Chotard, Issaquena county?

A. Yes, sir.

Q. When did you first go there?

A. The last of October, 1896.

Q. How long did you remain there?

A. That was my residence until January 1st, 1907, a little over ten years.

Q. Were you familiar with the tract of land known as [fol. 298] Island 98, or Tullos Island?

A. Yes, sir.

Q. When you went there in October, 1896, what was the situation with respect to Island 98, whether it was there or not, and how much, if any?

A. Oh yes, sir; there was land there all right enough; yes, sir.

Q. Describe the water about that land?

A. The water—well, the river was eating in on the Mississippi side, caving in on there, and the land, of course,—well, the upper part of that land at that time was almost due west from Chotard Landing.

Q. Was that across the channel of the river?

A. Yes, sir.

Q. The river then, at that time, was east of this land?

A. Yes, sir; yes, sir.

Q. Now, was it an island?

A. Was it an island?

Q. Yes, sir?

A. At that time we called it a bar.

Q. Now, describe the way the waters were?

A. Well, the main channel was east of there—east of this land,—the island, we will call it—east of the island, and it was—the more it would cave here the more it would build [fol. 299] north and east from the lower part, or what we called the island would go north and come east, of course, the more the current became on the Mississippi side.

Q. You were not there, or were you, when the river once ran in approximately its present location?

A. Prior to the early eighties, you mean?

Q. Yes, sir?

A. No, sir.

Q. Now, what was there towards the south of this tract of land, if anything, in the way of a chute or stream, Mr. Hume?

A. South of it?

Q. Yes, sir? Or across it?

A. Nothing but the main river.

Q. Nothing but the main river south of it?

A. No, sir.

Q. In high water what was the situation there with respect to the island?

A. It was an island then all right enough.

Q. All right, how did the boats go?

A. The boats,—well, when they would have a bar,—when the Savannah would come down she would put freight off, for instance, at the camp, and if she had no freight from Vicksburg up for this Bend in here, you know,—for this [fol. 300] landing, I have known it to come across from Henderson's and go on the opposite side, or the west side of the island. Then it was high water, following the old Mississippi river channel.

Q. Following the old channel?

A. Yes, sir.

Q. Now, when the water was low, could you or not tell where the channel was?

A. Yes, sir; you could tell.

Q. How could you tell?

A. From the timber that was on the Louisiana side,——

Q. (Interposing.) From the timber, did you say?

A. Yes, sir; from the timber that was on the Louisiana side and the low depression there. There was a lake. A little hole. They called them lakes. Mr. Purnell and I, we camped over there.

Q. In other words, there was a depression where the old channel had been?

A. Yes, sir; and in some places lakes—what we would call lakes,—little lakes.

Q. Now, coming back north and east from there, from that depression was what you say was the island when the water was high?

A. Yes, sir.

Q. What sort of growth was on that land in 1896 and '97 and along there?

[fol. 301] A. Cottonwood and willow principally.

Q. What size cottonwood were they?

A. Well, I—I should think that some of them would go practically three feet in diameter.

Q. Are you familiar with the woods,—cottonwood and willows and their growth?

A. Generally I am.

Q. All right, you have lived in the woods all your life, have you not?

A. Oh yes.

Q. What about the age of those cottonwoods on that island in '96 and '97,—the apparent age,—your best judgment?

A. Well, they were pretty old, I judge, from the size of them. There was no way of telling unless you cut one down and counted the rings. You would just have to approximate it.

Q. I understand. Just give your best judgment? Approximate the age of the biggest cottonwoods there?

A. I should think that they ought to be at least forty or fifty years old.

Q. How much area was there in this island? How many acres, about, in '96 and '97?

A. At a low stage of water do you have reference to? A low stage?

[fol. 302] Q. Yes, sir.

A. I don't know. I have not the remotest idea.

Q. Was it a small island or a good big island?

A. It was a great big island, my goodness alive. By going the old river when the water was up it was where the river is now,—going back there now, from Henderson up to Newman's Point, or about there where it struck the river again, I would judge it to be four or five miles, and around the other way twelve or fifteen or possible sixteen miles around the current.

Q. Where these big cottonwoods grew and all in there, was that higher or lower than it was back along the old river bed?

A. Higher. I do not know how many feet, but I would guess possibly—I don't know—I guess possibly twenty or twenty-five or maybe thirty feet.

Q. You say you remained there until 1907?

A. Yes, sir.

Q. During that period did this island remain there as you have described it?

A. Oh, yes, sir.

Q. It never washed away?

A. No, sir; it build all the time—growing larger.

Q. Now, were you there along there in 1912 and 1913 when it is said that the river cut back into its old channel?

[fol. 303] A. No, sir; I was not there.

Q. Have you been there since that time?

A. I was there last September, a year ago.

Q. Last September, a year ago?

A. Yes, sir.

Q. Was the river then where it was when you left there in 1907?

A. No indeed.

Q. Where was it at that time with reference to the old river channel that you have described?

A. Chotard chute?

Q. Yes, sir?

A. Well, I guess any where—I would judge any where from one to three or four hundred yards coming out into the chute,—the bank of the rover when I left there in 1907.

Q. What I mean is this, since the river has changed, did it change to where this old chute was, or to a different place, where the old channel was?

A. I understand that it is right approximately in the old channel now.

Q. As near as you can tell it is right in the old channel now?

A. Yes, sir.

Q. Take the witness.

Cross-examination.

[fol. 304] By Mr. Dale:

Q. You say you lived ten years near Chotard in 1896?

A. No, sir; I said that I went there in 1896, on the 31st of October.

Q. Where did you live?
A. I was with Mr. H. B. Purnell.
Q. What property or place did you live on?
A. On his place, now Auration Plantation.
Q. How far is that from the Mississippi river?
A. Most of it was in the Mississippi river at that time.
Q. Most of it in the river?
A. Yes, sir.
Q. Where was that with reference to Chotard Landing?
A. They adjoined,—just north of it. Auration was just north of it.
Q. Auration just north of Chotard?
A. Yes, sir.
Q. And joined Chotard?
A. Yes, sir.
Q. It was nearly all caved in then?
A. Well, compared to what it was.
Q. Did it subsequently all cave in?
A. No, sir; there is a portion of it there. I think there [fol. 305] is possibly thirty acres back of the levee there, and a little strip in front.
Q. How far is that above Tullos Island—what you call Tullos Island?
A. Island 98?
Q. What name do you know that Island by?
A. I have heard it called by the name of Scruggs Island. There was a nigger by the name of Scruggs, he had a plantation on there, or a farm. I think so. I don't know, but I was told. That was before I went up there.
Q. You have heard it called Scruggs' Island?
A. Yes, sir.
Q. Did this nigger live on Scruggs' Island that you speak of?
A. At times I understand he did.
Q. That was before you went up there, you say?
A. Yes, sir.
Q. Personally you don't know that?
A. No, sir.
Q. Have you been on the island itself—you go out on the island?
A. Yes, sir; what we claim the island is now.
Q. What you claim the island is now?

A. Yes, sir.

Q. Do you know whether that same island that is there [fol. 306] now is the same island that was there when you went there? When you went on it?

A. Part of it is. It was building every year, north and east.

Q. Part of it is the same land that was there when you went there?

A. Yes, sir.

Q. How could you identify it?

A. For several reasons. It was building all the time.

Q. You went there in 1886 first, and how long did you stay there?

A. My residence was there until January 1st, 1907.

Q. Until 1907?

A. Yes, sir.

Q. Did you stay there all that time?

A. Practically. A few months I spent out of there and then I was right here in Hinds county. That was in '99.

Q. What was your employment?

A. When I was in the Delta?

Q. When you lived there on this place adjoining Chotard?

A. I was running a store and managing a little place for Mr. Purnell—this plantation I spoke of.

Q. This island that you spoke of, in what position in reference to the compass, east, west, north or south, was [fol. 307] it from the place you lived on?

A. Well, it was almost due west form Chotard Landing.

Q. Was that west from Chotard Landing?

A. Yes, sir; almost.

Q. And this island at that time was what size?

A. Well, I can't tell you. It was a great big batch of land though.

Q. You state that on the concave side,—the short side, that it was about five miles long, and about fifteen miles around the bend?

A. Yes, sir; I judge it to be that.

Q. The curve, the concave side of that island, around the bend, next to the main shore, was fifteen miles long?

A. Anywhere from ten to twelve or fifteen miles.

Q. And that was the island you speak about, Island 98,—the same island you speak about as Island 98?

A. I guess so, if you count the bar as an island. As long as it caved, before the river went back to the Louisiana side,—as long as it caved here, the bar would gradually build north and come east.

Q. As long as it caved? Where was it caving?

A. On the Mississippi bank.

Q. The Mississippi bank of the river?

[fol. 308] A. Yes, sir. You understand that it just built north and east. North and east, too, because the current of the Mississippi was growing narrower, more and more towards Searle's Bayou all the time.

Q. Did the island cave any?

A. None that I know of.

Q. How often were you on that island?

A. Well, anywhere from two to forty or fifty, possibly, times a year.

Q. What were you doing over there?

A. Fishing, hunting, loafing and having a good time.

Q. And you carried that business on in connection with your storekeeping?

A. Yes, sir; Mr. Purnell was there at times.

Q. Who kept the store for you while you was gone?

A. Mr. Purnell.

Q. Were you and Mr. Purnell partners?

A. No, sir.

Q. What did he have to do with the store?

A. He was the proprietor.

Q. He owned the store?

A. Yes, sir; the young brother did. H. P. Purnell owned the store, and W. R. Purnell was the one that was with me over there in camp on the bar.

Q. And who owned the store?

[fol. 309] A. H. P. Purnell.

Q. You did not own it then? You merely clerked?

A. No; I was at work on a salary.

Q. When was the last time you saw that island you spoke of?

A. Last September, a year ago.

Q. And that island that is there now is the island you spoke of, is it?

A. Yes, sir; I don't know anything to the contrary.

Q. Well now, when you went there the channel of the river was between that island and the Mississippi shore made in 1896?

A. Yes, sir.

Q. The big steamboats, the Anchor Line, they passed down between the island you are talking about and the Mississippi shore?

A. Yes, sir.

Q. I believe you said something about some boats passing on the other side?

A. That was during the high water.

Q. They did not go any time except during high water?

A. No, sir.

Q. The boats did not pass west of the island you speak of except during high water?

[fol. 310] A. No, sir; not that I am aware of.

Q. From 1896 until 1907 they all came east of the island and between the island you are talking about and the Mississippi shore?

A. Yes, sir.

Q. You were not there after 1907 except when you went there in September, a year ago, were you?

A. No; I was up there the fall and winter—each fall and winter, until 1910-1910 inclusive. I was there in the fall or winter of 1907 and 1908, '8 and '9, '9 and '10, and after February, 1910, I did not go there again until last September, a year ago. My father died in 1910?

Q. The only timber you knew about on the island was cottonwood and willow?

A. That is all that I call to memory.

Q. And you were there from forty to fifty times a year?

A. I say from twice to forty or fifty times a year.

Q. And if there had been other timber on there besides the cottonwood and the willow you would have noticed it, would you?

A. Possibly I would.

Q. Did you ever work in the timber in any way?

A. How's that?

Q. Are you a timber man?

[fol. 311] A. No, sir.

Q. You have never worked in the timber? You have never gone out in the timber?

A. I have split rails, and worked in that way. But as far as logging, as it is called, for a saw mill purposes or anything like that I never did.

Q. But you know timber all right?

A. Yes, sir.

Q. You were raised in the country were you, or not?

A. Yes, sir.

Q. You are perfectly familiar with the kind of timber, the timber on this island you speak about, was cottonwood and willow?

A. Principally.

Q. Was there any other kind?

A. Possibly there was scyamore.

Q. Do you know whether there was any *scy*amore or not?

A. No; not positively.

Q. Do you know whether there was any gum or not?

A. Gum?

Q. Yes, sir?

A. I can't remember positively.

Q. Do you know whether there was any oak there or not?

A. Any oak?

[fol. 312] Q. Yes, sir?

A. I can't remember that.

Q. If there was any other timber there besides cottonwood and willow you don't know it, and yet you were on that island from to forty or fifty times a year?

A. I don't remember it.

Q. The island on the river was on one side, on the shore side was about five miles, and on the side where the boats went around in the bend, next to the Mississippi shore was somewhere along from ten to fifteen?

A. That is about it. That is my estimate.

Q. You never measured any of the timber, cottonwood or willow either?

A. No, sir?

Q. Which was the larger, the cottonwood or the willow?

A. How's that?

Q. Which was the larger, the cottonwood or the willow?

A. Oh, the cottonwood.

Q. And what size do you say it was then?

A. Well, I judge some of it was three feet in diameter.

Q. Did you say that it was twenty or twenty-five inches,

or that it might have been thirty inches awhile ago? Prob- [fol. 313] ably you were talking about the island.

A. I would say that there was some about three feet in diameter.

Q. When was it that it was about three feet in diameter —what year? Was it in 1896 or 1907, or 1926 or 1925?

A. I did not go over there in 1925.

Q. You did not go there at all?

A. No; not in 1925.

Q. When did you see it last? When did you see the island last?

A. Last September, a year ago I was up there at the plantation.

Q. I asked you when you last saw the island there?

A. I think the last time that I was there was in the winter of 1909. It might have been 1908.

Q. You said awhile ago that it was in 1907 the last time as I understood you?

A. That was when I was leaving there.

Q. You went there after?

A. I went there after, you know.

Q. After that did you go on the island?

A. Yes, sir.

Q. You went over there hunting?

A. Yes, sir.

Q. That was when you noticed that the timber was about [fol. 314] three feet in diameter?

A. Well, I don't know that that was the exact time, but about then.

Q. That was as big as you have ever seen it, was it? That was the last time that you saw it?

A. About that, according to my recollection.

Q. It had gained its largest size in 1909, the last time that you saw it, of course?

A. I suppose so; yes, sir.

Q. And at that time it was about three feet in diameter. Now, on which part of that island was the timber the larger? If it was larger at one part than another?

A. It was the lower part.

Q. The lower part?

A. Yes, sir.

Q. How far was that from Chotard Landing, I will say —from the store?

A. The store was back of the landing.

Q. The store was back of the landing?

A. Yes, sir.

Q. It was right close to the landing, was it?

A. A mile.

Q. A mile back of the landing?

A. Yes, sir.

[fol. 315] Q. The store was not on the river then?

A. No, sir; it was back of the levee.

Q. Now, was Chotard Landing due west of your store?

A. Almost; yes, sir.

Q. How far was it from Chotard Landing?

A. The store?

Q. No; the big timber that you are talking about?

A. It was across the river, of course, and then on the high part of the ground from low water. You mean from low water? The highest part of the ground was where the largest timber was. I would judge it to be anywhere from a quarter or possibly a half a mile from the water's edge.

Q. I am just asking you how far it was from Chotard Landing?

A. I never have measured the river. I don't know how far.

Q. Just simply across the river to the edge of the island?

A. Yes, sir.

Q. Straight in front of Chotard, or practically so?

A. Yes, sir.

Q. Due west from Chotard?

A. Almost due west, I will say.

Q. You don't know whether that island ever caved away entirely or not?

[fol. 316] A. That was before my time.

Q. You never knew anything about it before '96? You don't know whether that was a part of the Newman tow head, do you, Willow Point or Bewman tow head? The part you spoke about?

A. No, sir; I do not.

Q. As far as you know it might have been connected with it and cut off from there by the river?

A. So far as I know; yes, sir.

Q. Did you ever hear of the Newman Tow Head?
A. Possibly I may have.
Q. You don't know whether you did or not?
A. I don't think that I have known it by that name.
Q. Did you ever hear of Willow Point?
A. Oh yes, sir.
Q. Did you ever hear of the Newman bar?
A. Yes, sir.
Q. Then you are not sure that you ever heard of Newman Tow head, but you don't know?
A. I may have, but I don't recollect it.
Q. Were you ever on Newman's bar?
A. No, sir.
Q. And when you were there was that bar making out from the Louisiana shore towards Mississippi, between 1896 and 1907?
[fol. 317] A. I don't know that you could call it that. It was making north and east from the high part of the island.
Q. Making north and east?
A. Yes, sir.
Q. From Willow Point?
A. Oh no.
Q. I ask you whether or not it was not making east or northeast from Willow Point, making out this way from the Louisiana side?
A. Willow Point is above this island.
Q. How far above?
A. I don't know.
Q. Do you know where Willow Point is?
A. Some several miles. I have always known it as around the bend from the bar.
Q. Willow Point is around the bar from the part you speak of?
A. Yes, sir.
Q. Is the bar on the Louisiana side opposite this island and does it extend away out towards Mississippi?
A. At Willow Point?
Q. Any place? Willow Point or any other place? Is there any bar at all *at all* opposite the island in the river there? Extends out towards the island from the Louisiana shore?
A. Yes, sir; the same thing. It goes both ways.

[fol. 318] Q. What do you mean by "Goes both ways?"

A. The highest part of this land, this island here. It is high here and low towards Louisiana.

Q. I am not talking about the island. I am talking about the Louisiana shore. Did a bar make out from the Louisiana shore anywhere about the island?

A. I don't know whether it did or not.

Q. If any ever made out you never saw it?

A. I don't know whether it made out or how it made.

Q. Did you ever see from the island you are talking about any bar over on the Louisiana shore?

A. From the island on the Louisiana shore?

Q. Could you see—you said that you were on the island from two to forty or fifty times a year between 1896 and 1907, didn't you? You said that, didn't you?

A. Yes, sir.

Q. You could see the Louisiana shore from the island, couldn't you?

A. Well, I could see the timber.

Q. You could see the timber?

A. Yes, sir.

Q. Could you or not tell whether there was a bar making on the Louisiana shore opposite this place?

A. Yes, sir; between the island and the bar and the main Louisiana bank, I mean, of the old river.

[fol. 319] Q. Was there a bar there or was there not?

A. Yes, sir; there was land there.

Q. But you don't know whether it was a bar or just made land?

A. Well, for one reason it was made land all right enough.

Q. But you are not willing to say whether it was a bar or not?

A. We called it a bar. We called the whole thing a bar for that matter.

Q. What do you mean when you say you called the whole thing a bar?

A. The land that was there.

Q. You are talking about over on the Mississippi side now?

A. Yes, sir.

Q. I am not asking about the Mississippi side. I am asking you about whether or not there was a bar over on the Louisiana side? You don't know? That is right, isn't it?

A. No; I will not say that.

Q. You will not say that you don't know and you will not say that you do know?

A. The best I can remember.

Q. I don't want anything you don't know. I just want [fol. 320] you to tell me what you do know?

A. The best I can remember that bar built north and east.

Q. You mean the bar on the Mississippi side? You are talking about this island No. 98 building north and east?

A. Yes, sir.

Q. I am not asking you about that any more. I am asking you if you know about a bar building out from the Louisiana side? About any bar building out from the Louisiana side. That is what I am asking you.

A. At that place?

Q. Yes, sir?

A. Yes, sir; in low water there was a bar there.

Q. You could not notice any bar at all except in low water. Was there a bluff bank on the Louisiana side?

A. It was a gradual slope from the highest part of the island towards Louisiana.

Q. You mean the slope went out from the island towards the Louisiana shore. I am not asking you a word about the island. I am asking you — there was a bank or a bluff on the Lousiana side?

A. No, sir; not that I remember of.

Q. But you don't know whether there was or not?

A. No, sir.

[fol. 321] Q. You don't know whether there was a bank or a bluff on the Louisiana side and you don't know whether there was a bar on the Louisiana side, and you don't know whether there was — bar formed out from the Louisiana side over towards the Mississippi side?

A. No, sir; I do not.

Q. What you have been talking about was connected over in times of low water you could go across from the Louisiana shore from the island you are talking about?

A. I think so; yes, sir.

Q. You could walk across from the island you are talking about over to the Louisiana shore?

A. In places; yes, sir.

Q. And there was just a depression between that island and the Louisiana shore?

A. Yes, sir.

Q. The steamboats could run through that depression in high water?

A. Yes, sir; in high water I have known them to do it.

Q. Did that condition exist all of the time from 1896 to 1907, as long as you were there?

A. Yes, sir.

Q. Practically no change?

A. No, sir; only the bar was getting larger all the time.

[fol. 322] Q. The bar was getting larger?

A. Yes, sir.

Q. Extending over the river further?

A. Yes, sir.

Q. It was the Mississippi side that it was caving from?

A. Yes, sir; and the bar built towards the Mississippi side the more it caved.

Q. What size was the island when you first noticed it in 1896? What was its length on the Mississippi side and what was its length on the other side?

A. Well, now, that I can't tell. It was a good big body of land there at that time.

Q. Did it extend above Chotard Landing?

A. Yes, sir.

Q. How far above?

A. When I first went there in '96 and '97—the fall of '96 and '97, the bar was, I judge,—the upper end of the bar was about opposite Scruggs' Landing.

Q. Was that bar at that time, on the Mississippi side, the long side, five or six miles long?

A. I would judge that it was possibly longer.

Q. Possibly longer?

A. Possibly so.

Q. It might have been seven or eight?

[fol. 323] Q. Where is Scruggs' Landing with reference to Chotard Landing?

A. I would judge it is,—it would be four or five or maybe six miles above.

Q. Scruggs' Landing is about four or five or six miles above?

A. I judge it to be that.

Q. Chotard Landing?

A. Yes, sir; where Chotard Landing was then.

Q. What plantation was Scruggs' Landing on, you *you* recollect?

A. Scruggs' I believe.

Q. Did the plantation have a name?

A. Yes, sir.

Q. What was the name of the plantation?

A. It was called Scruggs' I think, but I am not positive.

Q. You spoke of this Island 98. When did you first hear of it being called Island 98?

A. When I went up in the Delta in '96.

Q. Who did you hear call it that?

A. Every one that spoke of it called it by that name. They would call it Scruggs' Island, some would.

Q. Called it Scruggs' Island?

A. Some did; yes, sir.

[fol. 324] Q. That was opposite Scruggs' Landing was it they called Island 98?

A. Scruggs Island.

Q. It was in the river opposite his place?

A. The upper end of the bar was in about 1909 or 1910. It came on up there last. I judge the upper end was just about opposite Scruggs' Landing, or where Scruggs' Landing was then.

Q. Well, was it there when you first went there in 1896?

A. Well, the land, of course, was further west than it is now, by a great deal. There is a difference in the amount of it that has caved off in there now.

Q. But the island was opposite of Scruggs Landing was it, at the time?

A. A portion of it. A portion of the bar was; yes, sir, from the island.

Q. They called it Scruggs Island?

A. Some did and some called it Island 98. I think the Government had it down there as Island 98.

Q. You don't know that?

A. No; I am not positive of it, but I have always heard it spoken of as that, Island 98. I know it was an island that was in front of Chotard.

Q. And also in front of Scruggs?

[fol. 325] A. Well, possibly it did go up there.

Q. It was some island, anyhow?

A. Yes, sir.

Q. However far it went?

A. Yes, sir.

Q. Did you say the main island was west of Chotard Landing?

A. How's that?

Q. I was under the impression you said that the main island was west of Chotard Landing. Is that correct or not?

A. The high part of the land I said was approximately west of Chotard Landing.

By Mr. Brandon:

Q. On direct examination, in response to a question as to whether the island was there, you said there was land there, is that correct?

A. How's that?

Q. You said in reply to a question asked you by Judge Creekmore when you first went on the stand as to whether Island 98 was left, any of it, you said there was land there, didn't you?

A. In regard to the highest place?

Q. You said that there was land there?

A. Yes, sir.

[fol. 326] Q. Now, you testified that that land was connected by bars with the Louisiana shore? That is correct? In low water?

A. Yes, sir.

Q. You had never been up there before 1896 had you?

A. No, sir.

Q. If the land that you refer to was connected with the Louisiana shore, you don't know whether it was a part of the original—of your own knowledge—whether it was a part of the original Island 98 or not, do you?

A. How's that?

Q. I say, you don't know, of your own knowledge—if this land you refer to was connected to the Louisiana shore, you don't know, of your own knowledge, whether it was a part of the original Island 98 or not, do you?

A. No, sir.

Q. You do not?

A. No, sir.

Q. That is all.

Redirect examination.

By Mr. Creekmore:

Q. Mr. Hume, as I understand you, you have stated the conditions as to the high land, the low land, the depressions and the growth of things on there?

[fol. 327] A. Yes, sir.

Q. You don't undertake, of course, to tell anything of your own knowledge about it before you ever went there?

A. No, sir.

Q. Before you ever saw it?

A. Certainly, of course not.

Q. That is all. Stand aside.

(Witness excused.)

R. E. Foster, called as a witness on behalf of the defendant, was sworn and testified as follows:

Direct examination.

By Mr. Creekmore:

Q. State your name and age to the stenographer, please?

A. R. E. Foster; seventy-five.

Q. Where do you live, Mr. Foster?

A. Issaquena county, on the banks of the Mississippi River.

Q. Do you know Island 98, sometimes called Tullos Island, and sometimes called Scruggs' Island?

A. Yes, sir.

[fol. 328] Q. Where do you live with reference to that island?

A. Well, right across the river, about three miles over on the land.

Q. How long have you lived there?

A. Since 1882.

Q. Is or not this island in sight of your place?

A. I have three places on the front. It is in sight of the lower place; yes, sir.

Q. What is your occupation?

A. Farmer.

Q. Have you lived there continuously since 1882?

A. I have.

Q. Do you hold any official position in the state, Mr. Foster?

A. I am a member of the legislature.

Q. From Issaquena county?

A. Yes, sir.

Q. How long have you been a member of the legislature, Mr. Foster?

A. Since 1912.

Q. Since 1912?

A. Yes, sir.

Q. Since 1882 how frequently have you seen Island 98?

A. Oh, I don't know about that. I go down to my place,—the lower place, sometimes twice a day, and sometimes [fol. 329] maybe once a week.

Q. Have you seen this island through those years as often as once a month?

A. Yes, sir; more than that. Much more than that.

Q. Much more than that?

A. Yes, sir.

Q. State please, whether or not between 1882 and the present time that island has washed away?

A. It never all washed away; no, sir. If it did I didn't see it. All of the main part is there now. It never all washed away.

Q. How many——

A. (Interposing.) You can see from the land on this side just as plain as I can see you, as there is nothing in sight between you but the river.

Q. You saw that frequently?

A. Yes, sir.

Q. Between 1882 and 1912 did the river cave away the Mississippi bank between your place and this island and cut into the Mississippi shore?

A. Yes, sir; I lost one place there.

Q. You lost one place by it?

A. Yes, sir.

Q. And of course you know about it then?

A. I lost my Arcadia place.

[fol. 330] Q. In that caving of the river there you say the island did not wash away?

A. No, sir.

Q. Are you able to say how much of it was left there and not washed away?

A. No, sir.

Q. Well, would you say that it was a small or a considerable area?

A. Well, I don't know the extent of the island—what it was called there on the river—but it used to go on up further west, over the upper part there, around next to the Louisiana side. I don't know how far it was.

Q. You say at times you could see this island from your place as you went about your business?

A. Yes, sir.

Q. What was on the land as you would look across to the island?

A. Well, at one time there was some land in cultivation, and there was a tenant house. I stopped there several times for the boat to put off and take on freight. There was a gin on it.

Q. You spoke of a gin being on it at one time. Was this island ever occupied by a man named Scruggs?

A. Yes, sir.

Q. It was known as Scruggs' Island?

[fol. 331] A. Yes, sir; it was called two or three names—98 and Scruggs, and I don't know what the other one was.

Q. In the nineties when you looked across there and saw this island, was there or not timber growing on a part of it?

A. There was. The best I could tell with the eye.

Q. What was the size of the timber? I mean the height?

A. It looked like it might be forty or fifty feet, maybe more, I don't know.

Q. Tall timber?

A. Yes, sir.

Q. Were you ever on the island?

A. I was never on the island—never got off the boat. I never was over there.

Q. You could see it from the Mississippi shore?

A. Yes, sir.

Q. Now, would it be possible for that island to be washed away and you not know it?

A. No, sir; for I have been there. I bought that property in 1882 and I have been there from that time until this, and the island is there right now to see it. There has been no gin on it for a long time, though.

Q. Yes, I understand that. In 1882 where did the river run in reference to its present location, or do you know [fol. 332] about that?

A. What time—what date?

Q. In 1882?

A. I moved there in 1882.

Q. Did the river run then where it runs now?

A. I think it ran between that Island and the Louisiana side.

Q. Do you know about the cut-off in 1912?

A. Out in front of the Meyer place?

Q. No; down at the island, where it cut back the west side of the Island?

A. Well, that river changed there time and time again. We discussed it with the steamboat captains coming and going. It is there yet to show. Part of it is there. The river is very wide, and sometimes a sand bar will show up in the center, sometimes on the Mississippi side, and sometimes on the Louisiana side, and sometimes between the sides.

Q. The river shifted there from time to time?

A. Yes, sir; very often.

Q. That is all.

Cross-examination.

By Mr. Dale:

Q. Mr. Foster, how near did you say your nearest place was to the island you have been speaking about?

[fol. 333] A. Just across the river. The river divided us. No, it did not. Not then when I went there. It does now.

Q. You say it does now but it did not when you went there. Are you speaking about in 1882 that you went there?

A. The river did not run between me and the island—between—there was a low place there, but the river run between the island and the Louisiana side.

Q. The river run between the island and the Louisiana side?

A. Yes, sir.

Q. When you went there in 1882?

A. Yes, sir.

Q. When did it change and come back between the island and Mississippi?

A. It has been doing that off and on. You see this place down there commenced to cave in—commenced caving, and it was called to the attention of the Levee Board and the assistant engineer went and looked at it, and they worked on the levee but it just kept on washing until one of my plantations, Arcadia, caved entirely away.

Q. About what time did it begin to cave your place away?

A. My place?

Q. Yes, sir.

[fol. 334] A. Well, it caved there—it did not cave when I first went there, but it commenced caving the second or third year after I went there.

Q. It began about 1884?

A. Yes, sir.

Q. And between that time and 1894, your place was entirely gone?

A. Well, Arcadia plantation was all gone except a little place.

Q. It did not all go, but all except a small part?

A. Let me ask you a question there. Are you talking about the island or my place?

Q. I am talking about your place.

A. A part of my place is there yet.

Q. When did it stop caving at your place?

A. Well, they have been revetting my bank there for eight or ten years.

Q. That does not answer my question. When did the caving stop?

A. The caving has not stopped yet.

Q. It is still caving there at your place?

A. Yes, sir.

Q. When did they revet the bank there?

A. They have been eight or ten years revetting the bank.

[fol. 335] Q. Do you know what years that has been, Mr. Foster?

A. Well, they just patched the revetment there last year. Ten or twelve years before that they revetted there.

Q. Well then, they made a revetment there ten or twelve years before that?

A. Yes, sir.

Q. About 1910?

A. Yes, sir.

Q. Do you recollect the cut-off of 1912?

A. At the island or below there?

Q. The cut off that went through Willow Point?

A. Do you have reference to the island cut off by by caving? It had been going through my place—been doing that for a number of years.

Q. When you went there in 1882 where was the channel of navigation?

A. On the Louisiana side.

Q. Did they have a change and come to the Mississippi side?

A. It is on the Mississippi side now.

Q. When did it change?

A. It gradually changed. My front caved off, and as my front caved off it came on over to my side and it is there right now.

Q. You don't know when the steamboats quit running [fol. 336] west of the island you speak about and began to run east of it?

A. I don't know all of it. It gradually occurred every year as far as that is concerned.

Q. You did not pay much attention to the navigation of the river?

A. Yes, sir; I did because it was cutting my place away mighty fast.

Q. Your place. Of course you were paying attention to your place caving, but you did not pay so much attention to the way that the steamboats ran?

A. I did not; no, sir.

Q. Notwithstanding the fact that you paid a great deal of attention to the way the steamboats were running, you don't know when it was that they made the change and stopped running on the Louisiana side of the island you have been talking about, and began running on the Mississippi side?

A. No; that was gradual. The little boats ran there first, and after a while the big boats began to go through there.

Q. Can you give us any idea at all as to about what time it was that the big boats began to go through there next to the Mississippi shore?

A. No, sir; I can not, because in the front of my place there was a big island there, and I owned 680 acres, and the [fol. 337] river used to go on the other side of that, and go around there and cut off and by my place. I recollect the cut off was made gradually, made year by year. The small boats went through first, and there was something on it in the nature of a sand bar, and after that washed away I saw the bigger boats go through.

Q. What size was that island when you first recollect it?

A. I can't tell you for I don't know.

Q. Did it extend above your place?

A. No, sir.

Q. How far was it below your place?

A. Just across the river from my lower place.

Q. Was it right out in front of your place—opposite your place?

A. Not my home place, but my lower place.

Q. I am not talking about your home place. What are the names of your plantations?

A. Arcadia and Forest Home—two places there together.

Q. Now then, which one was it that caved in, Arcadia or Forest home?

A. Arcadia. Forest Home is there yet.

Q. Is Forest Home above or below Arcadia?

A. Below.

Q. Did it cave in the river, or any part of it?

[fol. 337½] A. A part of it caved in the river; yes, sir.

Q. A part of Arcadia and a part of Forest Home are still there?

A. A little part of Arcadia is there yet. A very small part of it.

Q. And a part of Forest Home is still there?
A. Yes, sir.
Q. Now, was this island in front of both of your places?
A. Yes, sir.
Q. When did you first hear it called Island 98, Mr. Foster?
A. Ever since I have been there, and I went there in 1882, as I said.
Q. You just generally heard it called Island 98?
A. Yes, sir; I had no interest in it though.
Q. I believe you said that there was a gin on it?
A. Yes, sir.
Q. Do you know who owned the gin and operated it?
A. No, sir.
Q. When was that gin there?
A. In 1882 when I bought the property.
Q. Did they gin cotton over there? Did you see the gin running?
A. No; I did not.
[fol. 338] Q. Did you go over there on that island at all?
A. No, I did not, only on the boat.
Q. Did you hear the gin running, or know whether it run at all or not?
A. I don't know.
Q. How do you know the gin was there?
A. I saw the building from where the boats landed on the upper side to take on and put off freight.
Q. Could you tell that it was a gin building from across the river?
A. I could see it from the boat landing when they would put off freight on the island when I would be on the boat.
Q. You would be on the boats when they would land there?
A. Yes, sir. Now you have got it straight.
Q. What size was that island in 1882 when you first knew it?
A. I don't know.
Q. You don't know how long it was?
A. I do not.
Q. You don't know how wide it was?
A. I do not.
Q. You don't know anything about the size of it?

[fol. 339] A. No, sir.

Q. You could not even approximate it?

A. I had no interest in it whatever. I knew that it was there then and it is there yet.

Q. What size of the trees on it?

A. I don't know.

Q. Do you know what kind of trees were on it?

A. Cottonwood and willows from the way it looked.

Q. What direction from your place with reference to the points of the compass was that island?

A. West.

Q. Has the channel filled up between your place and what you say was that island?

A. No, sir; the Mississippi river is there now.

Q. The Mississippi river is there now?

A. Yes, sir.

Q. The Mississippi river is over next to your place now?

A. Yes, sir; I suppose the channel filled up between that island and the Louisiana side.

Q. Your idea is between that island and the Louisiana side the channel is now filled up?

A. I think so; yes, sir.

Q. Of course, not having gone on the island at all you don't know what size the trees were in 1882, and what size [fol. 340] they are now?

A. No, sir; I do not.

Q. Did the island cave at all that you know of?

A. Well, by reason it must have, because the river run on the other side and now the river runs between the island and my place. There must have considerable caved off.

Q. Do you know whether it did or not?

A. Do I know whether the island caved off?

Q. Yes, sir?

A. The island is gone—the part next to me is gone and the river channel is there.

Q. A pure open river between you now and the Louisiana shore, is there, and the island is gone?

A. No, sir; when the island was there the river ran between the island and my place. It did not run between there when I went there in 1882.

Q. Well now, you say it must have caved. I am trying to get from you whether it caved or not?

A. I will explain it this way. Take three pieces of paper. That is the island there. That is supposed to be the island. That was there. This is my property here. When I went there there was only a small place going through there. It was not running through there only in high water. Now the whole river is between that island and my place. Now [fol. 341] do you understand it? There is no timber between that place and my place. Something must have gone out.

Q. What I am trying to get at is——

A. (Interposing.) I am trying to explain it to you. Do you understand that?

Q. I will understand it before I get through with you, Captain. You don't know how much of that island is left, do you?

A. No, sir.

Q. You don't know whether it is just a small part or a big one?

A. The channel of the river there—the river must be two or three miles wide.

Q. Two or three miles wide from your place to where that island remains?

A. It must be two miles; yes, sir.

Q. You can only tell there is some of the island there by looking across and seeing the timber?

A. That is it.

Q. Could you tell whether the timber is on the island or the main land?

A. Yes, sir; the growth, I don't know that, but the green timber I saw. I don't know what size it was. I can't tell you that.

Q. The only way you have of knowing that there is any [fol. 342] of the island left is by seeing the timber over there is a distance of two miles?

A. Yes, sir; and the hunters being over there on the island. I have not been over there myself.

Q. You can't tell what anybody else told you.

A. I can't tell how big the timber is, but I do know that the whole channel of the river is between the island and my place.

Q. The only reason you have of knowing that there is any of the island left there now at all is by the fact that you see timber over a distance of about two miles?

A. Yes, sir; you can. The old channel was supposed to be between the island, the main river. That is smaller timber, and there is timber below there on Island 98. I can tell you that much.

Q. Does the main bank cave out around the point of Island 98?

A. Now?

Q. Yes.

A. No, sir.

Q. Did it in 1882?

A. Yes, sir.

Q. What direction would you look from your place to see this timber?

[fol. 343] A. West.

Q. You would look west then—you would look exactly west from your place?

A. Yes, sir.

Q. You would look exactly west from your place a distance of two miles to see the tall timber?

A. Yes, sir.

Q. How could you tell, at two miles distance, whether the timber was on the main Louisiana shore or on the Island?

A. I could not tell because I have not been on it.

Q. You don't know?

A. No, sir.

Q. It is a fact that you don't know whether the timber which you think is still on the island, whether it is on the island or on the Louisiana shore?

A. I can not. The only reason I said——

Q. (Interposing.) I know. You are just drawing deductions. I am talking about of your own knowledge.

A. I believe it was the island—on the island.

Q. You have not been there and you don't know, and if you absolutely knew it might be the Louisiana shore? That tall timber that you saw there?

A. I would not think so.

Q. You would not think so, but the probabilities are that you don't know?

[fol. 344] A. No, sir.

Q. Did they ever have a little mail boat running through there named the Issaquena?

A. Yes, sir.

Q. What size boat was she?

A. She carried several hundred bales of cotton. I can't tell the capacity of it.

By Mr. Brandon:

Q. What draft did she have?

A. I don't know. I don't know anything about steamboats.

Q. As compared with the Anchor Line Boats? The Anchor Line also run on the Mississippi river?

A. Yes, sir.

Q. Now, as compared with the Anchor Line, was she a smaller boat?

A. She was smaller than the other boats.

Q. A boat of light draft was she?

A. Yes, sir.

Q. The Anchor Line Boats were large boats and drew deep water, did they not?

A. Yes, sir.

Q. Boats of light draft, like the Issaquena, could go through the chute and places where the Anchor Line boats [fol. 345] could not go? Is that a fact?

A. Yes, sir.

Q. Now, before the deep channel of the river changed that ran between what has been represented as formerly Island 98 and the Mississippi shore, boats of light draft could go through there before the Anchor Line boats could, is that a fact?

A. Yes, sir; and they went through there sometimes when the water was low, but not low enough for the other boats to go through.

(Witness excused.)

[fol. 346] Lawrence Towns, colored, called as a witness on behalf of the defendant, was sworn, and testified as follows:

Direct examination.

By Mr. Butler:

Q. What is your name?

A. Lawrence Towns.

Q. What is your age, Lawrence?
A. I am fifty-nine years old.
Q. Where do you live?
A. Chotard.
Q. What county is that in?
A. Issaquena.
Q. How close is Chotard to the Mississippi river?
A. Now?
Q. Yes.
A. Right on the river. It always have been.
Q. How long have you lived over there at Chotard?
A. I went there in February, 1880. I can't read now, and you got to tell me just what you want to know about it. You got to ask me, and I will tell you just what I knows.
Q. Do you know where there is an island, or was an island west of Chotard plantation—northwest of Chotard plantation, sometimes referred to as Island 98, and sometimes referred to as——

[fol. 347] By Mr. Dale: We object to the witness being told the names. Let the witness state the names himself.

By Mr. Butler:

Q. Go ahead and answer the question.
A. Did I know an island?
Q. Yes?
A. I am going to tell what we called an island in there, one that we called Scruggs' Island, and there was another we called Tom Hopkins' Island.
Q. With reference to Chotard plantation where was Scruggs' Island?
A. Where was Scruggs' Island?
Q. Yes?
A. Right in front of Chotard. It run down below Chotard near the line of Warren county.
Q. Did you ever have any connection with steamboats on the Mississippi river?
A. Ten years. Ten years a roustabout.
Q. Where did you operate from?
A. St. Louis to New Orleans; St. Louis to Pittsburgh, Pennsylvania—Kansas City.

Q. Do you know where the land is there now called the island, where you landed with Mr. Albritton, Mr. Creekmore [fol. 348] and myself recently in a boat?

A. Yes, sir.

Q. I will ask you when you first went there, and as far back as you can remember, where the Mississippi channel was with reference to that place where we landed—which side of the landing was it on?

A. West of where we got in the boat at, going that way, towards the Louisiana shore, and a peg setting down there where I showed you. Chotard was there then. Mr. Purnell had a gin called the Cabin Home Gin, and a panther grabbed a girl, a little baby too, a girl with a little baby, and tried to take it away from her, and she whipped it mighty good with a broom stick and made that panther turn her ma's baby loose, and Mr. Purnell, the old man, he went out and killed the panther, and it was twelve foot from tip to tip.

Q. What was between the plantation and the island?

A. The river.

Q. Was it a big river or a little river?

A. The Mississippi river.

Q. Where was the main channel?

A. It was about—when I first went there it was about, I guess, as near as I can come at it, about a mile from where that peg is setting.

Q. Which side of the island was it on?

[fol. 349] A. The channel was on?

Q. Yes?

A. On the other side.

Q. What do you mean by the "other side?" The Louisiana side?

A. Yes, sir. I used to go there every Sunday.

Q. All right, but let us not go into detail so much. Now, has the island been there ever since you have been there?

By Mr. Dale: We object to the question as leading.

By the Commissioner: Yes, do not lead the witness.

By Mr. Butler:

Q. State whether or not the island has been there ever since you have been there?

A. Yes, sir; a part of it.

Q. Do you know where the boats ran that you worked on?

A. The boats running up and down there?

Q. Yes?

A. Yes, sir.

Q. Where did they go?

A. Up the Mississippi river at the bar, this side. That [fol. 350] was on account of caving. The water was washed out. Sometimes it would go in between the Island, and sometimes it would go outside the island. During high water they would go in between, and during low water they would go outside the island, back out here.

Q. And sometimes they would go on one side of the island and sometimes on the other?

A. Yes, sir; when the water was high. In high water.

Q. Now, were you with Mr. Albritton and his man when a survey of that property was made up there about a year ago? When he came up there and surveyed it?

A. Yes, sir; I worked with him and Mr. Learned.

Q. What, if anything, do you know about a lake?

A. There was a lake over there.

Q. Over there about where some large trees were measured and where a hatchet was lost?

A. I know that there has been land there all the while.

Q. What do you know about a lake being there?

A. There was a lake there—a chute,—a lake there, what they call St. Francis Lake—Chute.

Q. When was that lake there?

A. Let's see. In 1900 I was there. The next year after that—I can't read. I got to get the year. In 1900 I got [fol. 351] married.

Q. Was the lake there when you got married?

A. The year before I married.

Q. The lake was there?

A. Yes, sir.

Q. Did you point out to anybody where the lake was on the ground?

A. No, sir; there was no way of knowing the land.

Q. But I asked you did you point out to anybody the place where the lake was, in the last year or two?

A. No, sir.

Q. Did you not show Mr. Albrotton where it was?

A. Yes, sir; I told him that was where it was. They lost a hatchet up there.

Q. At the place or point where you pointed out this lake was, was that as high or lower than the surrounding land there now?

A. Yes, sir.

Q. Lower?

A. Yes, sir; a low part there, and there is a high part.

Q. How far was that lake from those trees that Mr. Albritton, you and myself measured?

A. As near as I can come at it pretty close to it—about [fol. 352] a quarter.

Q. What direction?

A. East; the lake is east from that tree—west from that tree.

Q. From those trees that we measured?

A. Yes, sir; west from that tree. Going out west from the tree where we measured it.

Q. Towards Louisiana?

A. Yes, sir.

Q. That is all.

Cross-examination.

By Mr. Brandon:

Q. What is your present business?

A. What?

Q. What is your business at present?

A. You ask me something I don't know. When you ask me something that I don't understand I have got to get the information.

Q. Do you know what "business" is?

A. What I do?

Q. Yes? What do you do?

A. Run a store.

Q. Where?

A. Chotard.

[fol. 353] Q. Do you farm?

A. I have for two or three years, something like that. Not particular.

Q. You are a colored man?

A. Colored?

Q. Yes?

A. Yes, sir; I am colored.

Q. And you were a colored roustabout on the Mississippi river?

A. Yes, sir.

Q. And you now run a little store for colored people?

A. I do; yes, sir. Now I do.

Q. And how long have you been living up in the neighborhood of your present place?

A. At Chotard?

Q. Chotard?

A. How long have I been living there?

Q. Yes?

A. I went there in 1880.

Q. Was that when you quit the river?

A. No, sir; I was quite a boy then.

Q. Did you continue to work on the river after you went to Chotard?

A. I stayed on the river all the time I was at Chotard [fol. 354] off and on.

Q. Do you know the Newman place over on the Louisiana shore?

A. Yes, sir.

Q. What they call the Newman place, a tow head?

A. I don't know what they call it.

Q. On the Louisana main land, what is the name of the Newman plantation?

A. Do you mean the Newman place?

A. Yes?

A. I don't know what they calls the name of it. They just calls it Newman tow head.

Q. Was it called Willow Point?

A. Well, it was called—some called it Willow Point and I have got it here in my pocket.

Q. You have just handed me a paper. What is the paper you have handed me?

A. The paper I handed you? It is a lease of Mr. Learned and Capt. Reed. They leased me that island. I went over there on that island and tried to homestead it for a home, and I met some people and they told me that I could not

homestead it, that there was no land in this country no more, and so shortly after, a few years after, Capt. Reed, the sheriff of Adams county, he came down there and came up [fol. 355] there and had me to have that lease made out. I had another one. That is the second one that he gave me. He had it made out. I had to sign it up. I was on his island. I have another lease at home in my trunk. He told me that he would lease it to me and I said to him, "Captain, what will the lease be" and he said not over a dollar, and I said, let me have it for five years, then. I found out that I could not get it and it was no use for me to try and get in there, and after I found out that I could not get it I just leased it from him for a dollar a year, and I went to the Justice of the Peace office and signed it up. I had some hogs and things up there, and got to doing pretty good in there. Well, they come out there Mr. Learned and Capt. Reed and surveyed all around out there, all the way around from Chotard to Arcadia—do you want me to tell you all that I know about that?

Q. I just want you to answer my questions.

A. I did.

Q. I asked you what this paper purported to be that you handed me.

A. How?

Q. What is this you handed to me?

Q. You ask me a lot of questions that I don't know. You have to ask me so I can understand you. I can't read.

Q. All right. Did you say Mr. Learned came up there?

A. No, sir; I didn't tell you Mr. Learned. I said Capt. [fol. 356] Reed.

Q. Did you say that Mr. Learned came up there?

A. No, sir; I called Mr. Learned name once or twice myself. I went to Natchez to see him.

Q. Is this the paper that you signed for the lease?

A. There is my name right there? Is that my name there. I can't read. If my name is signed there I must have signed it.

Q. Yes, sir; and you signed it before Mr. Bowers, justice of the peace?

A. Is Mr. Bowers' name there?

Q. I am asking you the question.

Q. I can't read that. You asked me if my name is signed there. If my name is there I signed it.

Q. I asked you if you signed this paper?

A. I signed a paper before Mr. Bowers.

Q. And this is the paper.

A. Yes, sir; I think it is.

Q. And you have had it in your possession all the time have you?

A. How's that? What?

Q. Has it been in your possession? Have you had it in your possession?

A. Yes, sir.

Q. This is the paper is it?

[fol. 357] A. Well, I can't read.

Q. You have had it in your possession? In your pocket, have you?

A. Yes, sir.

Q. Is this paper you have handed me,—is that the paper you signed?

A. Is that the one you just read?

Q. Is that the paper you signed before Mr. Bowers?

A. Yes, sir.

By Mr. Brandon: We will ask that this paper be offered in evidence as Exhibit No. 1 to the cross-examination of this witness, Lawrence Towns, the same being a duly acknowledged contract of lease from Rufus F. Learned and Andrew B. Learned to Lawrence Towns, of land described as a certain tract of land in East Carroll Parish, State of Louisiana, containing about 2,000 acres, more or less, being what is now known as the Newman Tow Head, with accretions, and being a part of the Bell and Willow Point plantations in said Parish.

Document handed to the stenographer and marked Exhibit No. 1 to the cross-examination of this witness.

By Mr. Brandon:

Q. For how many years were you a tenant of the Messrs. Learned under this lease?

A. I signed the lease for five years, but just,—they just [fol. 358] leased it to me for one year at a time.

Q. How many years did you stay there as a tenant?

A. Me.

Q. Yes?

A. I can't just remember. I can't just remember how many years, but I know every Christmas I sent him a dollar and he sent me a little slip to put over that.

Q. A receipt for rent?

A. What?

Q. As a receipt?

A. Yes, sir; to put over that for the dollar. That show that if anybody came there where I had renewed my lease.

Q. Renewed your lease?

A. Yes, sir.

Q. About how many years did you renew your lease in that way by sending a dollar to Mr. Learned?

A. I guess, about as near as I can come at it, about six or eight years, something like that.

Q. Did you cultivate land on the Newman tow head during that time?

A. What?

Q. Did you cultivate any land on the Newman Tow Head over there?

Q. No, sir; I planted some corn down there for my hogs. [fol. 359] I just went down there and dropped it in the cracks. The river fell back and I just dropped it down in the cracks and it came up and the hogs eat it.

Q. You raised a crop over there for your hogs?

A. No, sir; I planted it in the water down there all right. I planted some turnips, too.

Q. How many hogs did you have over there?

A. I had about,—well, at one time I had 800 or 900, something like that. I judge from one up to about 900.

Q. You leased the land, according to the lease contract, the land known as the Newman Tow Head?

A. Yes, sir.

Q. With accretions?

A. Yes, sir.

Q. This Newman Tow head started out from the Louisiana shore, did it not?

A. Well now, I can't say.

Q. Wasn't you a roustabout on the steamboats?

A. Yes, sir.

Q. Then you don't know that this Newman Tow Head started out as a sand bar from the Louisiana shore?

A. I know it washed off.

Q. I didn't ask you that. I asked you if you did not know that the Newman Tow Head started out as a sand bar [fol. 360] from the Louisiana shore, off of the Willow Point plantation?

A. You don't want me to tell you something that I don't know, do you?

Q. I just want you to answer my question.

A. I am trying to answer your question the best I can.

Q. All right then, answer it.

A. I can't say for sure where that did come from.

Q. Was the Newman Tow Head ever attached by a sand bar to the Louisiana shore?

A. Was it ever attached by sand bar to the Louisiana shore—the Newman Tow Head? No, sir; that was across the main river, the Newman Tow Head.

Q. Did you lease it before or after the cut-off?

A. After the cut-off. I know where the cut off was. I went down there on the first boat that ever came through there.

Q. Before the cut-off was the Newman Tow Head attached to the Louisiana shore?

A. Let me see. Before the cut-off was the Newman Tow Head attached to the Louisiana shore. Is that the way I understand you? Before the cut-off was the Newman Tow Head attached to the Louisiana shore?

Q. Yes?

A. Not that I knows of.

[fol. 361] Do you remember the cut-off of 1912-13?

A. In 1912?

Q. The river went through the sand bar there between Newman's Tow Head and the Louisiana main land, didn't it?

A. Well now, for me to recite back the year——

Q. (Interposing.) I asked you whether the river did come through the sand bar between the Newman Tow Head and the Louisiana main land?

A. Yes, sir; it come through up by the head of Duvall's.

Q The question I asked you was did the river come through the sand bar between Newman's Tow head and the Louisiana main land. Just answer that yes or no, and then you may explain it if you want to?

A. I don't want to answer something that I will be sorry for afterwards. I want to tell you the truth. That is all that I want to tell you.

By the Commissioner:

Q. Do you understand the question?
A. I don't understand how he asked me.

By Mr. Brandon:

Q. I asked you if the cut-off of 1912-13 did not come through the sand bar between the Newman Tow Head and the Louisiana main land?

Q. Let me get it straight now, boss. The Louisiana Tow [fol. 362] Head? Did it come through. Let me get it straight.

Q. On the west side of the Newman Tow head?
A. On the west side?
Q. Yes; between that and the main land?

A. This would be like the river. The river would come down here, wouldn't it? You want to know if the river come through here,—he—left this island over here,—left Newman's tow head back over here? That's what you ask me?

Q. Will you answer the question?

A. I will if you will ask me. This was the tow head here, and this is the Mississippi river here, and that would leave the island over here and leave Newman's tow head over here. Here is the Mississippi river on down through here.

Q. The river comes through and leaves the tow head on the east side, towards Mississippi, does it not?
A. Yes, sir.

Q. Then did the Mississippi river go through, in 1912, between the Newman Tow Head and the Louisiana shore?
A. Absolutely.
Q. In 1912?
A. Did it go through in 1912?
Q. Between those two places.

A. Yes, sir—I don't know how you ask me. I can't an- [fol. 363] swer it unless I know how you ask me because I don't know.

Q. Do you understand the English language?

A. Sometimes I can understand the English language and sometimes I can't do nothing. I like to talk out to white people.

Q. You say you have been a roustabout on the river. How old were you when you began rousting?

A. I was about eighteen years old, I guess. I run off and left my mother—was treated hard.

Q. You used to land at Willow Point on the Newman place didn't you when you were on the boat?

A. Yes, sir;—not at Willow Point, but a little above Mrs. Newman's, at Mr. Nicholson's place on the Louisiana shore.

Q. That was before the cut-off of 1912 that you talk about? The sand bar had formed out from the Louisiana shore had it not?

A. Before 1912?

Q. Yes; do you know?

A. I am going to tell you when I find out what you call them years 1912, do you say—1912?

Q. I am not asking you about the year, but whether before that the sand bar started out from the Louisiana shore?

A. Had the sand bar started out from the Louisiana [fols. 364 & 365] shore—had the sand bar started out from the Louisiana shore?

Q. Yes. Tell me. Answer yes or no.

A. I have got to know what you want, and then I has to tell what I know. I want to be right. "Did the sand bar start from the Louisiana shore." Yes, sir.

Q. It did?

A. Yes, sir. The sand bar started out from the Louisiana shore.

Q. It made out from the main shore, did it?

A. Yes, sir.

Q. And the sand bar came out here from the Louisiana shore towards the Mississippi shore?

A. Came out here by here?

Q. Yes?

A. That sand bar?

Q. Started out from the Louisiana shore?

A. In between this river are you talking about?

Q. I am talking about the sand bar starting out from the Louisiana shore.

A. Going out back to Mississippi, here by here.

Q. Towards the Mississippi shore?

A. Yes, sir.

Q. Goes over here?

A. Yes, sir.

[fol. 366] Q. Before the cut-off of 1912 or 1913 how many miles had that grown out from the Louisiana shore?

A. Let me see.

Q. You used to go around there on the steamboat?

A. From the mouth of Chotard——

Q. (Interposing.) I mean how far did it go out from the Louisiana shore—the sand bar from the Louisiana side. How far did it go out?

A. Now, let me see about that question you ask me: Let me see if I know what you mean. Do you mean from the bend around to here, how far it growed out from the way it come back?

Q. I mean from the Louisiana shore. How far did it stick out towards the Mississippi shore? How far did it run out towards Mississippi?

A. Before it hit the Mississippi river over there?

Q. Yes? How many miles?

A. Let me see. How many miles across there. There was a lot of wild geese on there, and I have hunted on there, and it seems to me like about three miles. It looked that far.

Q. Where was the high part of the land on this sand bar that runs out from the Louisiana shore? Where was the highest part of the land? Was it at the end of it at what is called Newman's tow head?

[fol. 367] A. Where was the high part of the land and Newman's towhead?

Q. Was the high part of the bar Newman's Tow Head?

A. Was that the high part?

Q. Yes.

A. Yes, sir; it was higher than it was down below it.

Q. That was the part that you leased from Learned?

A. Yes, sir; that was where I had my hogs, you see.

Q. Did you ever see an island there called Tom Hopkins Island?

A. Yes, sir.

Q. Where was that?

A. Just above Scruggs' Island. Everybody had a bar but me, and I went there—that island was my uncle's.

Q. What island was your uncle's?

A. Tom Hopkins island was my uncle's. I had my hogs in there.

Q. Where was Hopkins' Island?

A. Just adjoining Scruggs' Island, just a little bit ahead of it.

Q. North of it, or south? Up or down stream?

A. North.

Q. Up stream?

A. Yes, sir; like this was Hopkins along here, Scruggs was down here, and it run down near Brunswick.

[fol. 368] Q. The river went sort of around west, did it?

A. No; the river run more north when I went there.

Q. It was up-stream from Newman's Tow head?

A. Yes, sir; coming right down to Chotard.

Q. Now, you said that you were on the river for how many years? How many years did you say?

A. I said about ten years.

Q. As this bar grew out towards the Mississippi shore, what took place on the Mississippi shore?

A. Chotard?

Q. Yes; the main land. Did the river cave?

A. Yes, sir; it caved out—washed out. Chotard run way back. Where Chotard was it went over it way on the other side the river. Purnell had a gin place over there called Cabin Home.

Q. Mr. Butler asked you a question or two about some place where you all landed. I don't know where you landed. Can you tell me?

A. We landed on the Louisiana shore. How do you mean that?

Q. I want you to tell me. I don't know. Did you land on the same place that you leased, this Newman Tow Head, from Mr. Learned?

A. Yes, sir; we went from Chotard—went up to that island.

Q. Now, you mention a lake that was there in 1900. Was [fol. 369] that a lake or a slough?

A. This place what we call St. Francis Chute.

Q. You call it a little lake—you give it the name of St. Francis Chute?

A. It is named St. Francis Chute.

Q. Where is that?

A. Over the other side of the river joining Mrs. Newman's, right down from Mrs. Newman's place, the Newman Tow Head. That was the main Mississippi river when I went there and it was named St. Francis Chute years later.

Q. Did you ever know the Newman Tow Head before the cut-off of 1912?

A. Yes, sir.

Q. Before the cut-off of 1912 the sand bar stretched all the way from the Louisiana shore to Newman's Tow Head, didn't it?

A. All the way down in front of Chotard.

Q. And Newman's Tow Head?

A. From Newman's Tow Head.

Q. In low water you could woulk from the Newman Tow Head to the Louisiana shore on the sand bar could you not?

A. All the way in front, you mean?

Q. Yes; from the Newman Tow Head to the Louisiana shore?

A. Yes, sir; that sand bar has always been pretty well [fol. 370] along there after the river—St. Francis Chute filled up.

Q. St. Francis Chute filled up?

A. Yes, sir.

Q. And you could walk at a low stage of the water,—you could walk from Newman's Tow Head to the Louisiana shore before the cut-off of 1912?

A. You give me questions that I don't understand. I can't answer unless you give me time to understand.

Q. Well, you know where the Newman Tow Head is?

A. Yes, sir.

Q. Because you leased that?

A. Yes, sir.

Q. Now, you testified that there was a sand bar between that connected the Louisiana shore and the Newman Tow Head, did you?

A. This gin was up there.

Q. I will ask you the question again, and will give you a chance to answer the question, as it seems to me that it is simple enough for you to understand. Did you know that a sand bar made out from the Louisiana shore and connected with this Newman Tow Head?

A. Made out from the Louisiana shore?

Q. Yes?

A. And connected with the Newman Tow Head?

[fol. 371] Q. Yes?

A. I could not say.

Q. Well, what do you say?

A. I could not remember whether it was that, but I do know that there has always been a river between us and the Newman Tow Head, the main Mississippi river. We could never get over there without getting in a boat.

Q. Since when?

A. Since when?

Q. Yes?

A. Since 1880 as I can remember.

Q. Do you say there was not any sand bar connected with the Louisiana shore,—connecting the Louisiana shore with the Newman Tow Head?

A. At what year?

Q. I am not talking about the year. At any time. Did you? Let me ask you this. Do you know where the land was you rented from Mr. Learned, where you had your hogs? You know that, don't you?

A. Yes, sir.

Q. That's what I'm calling Newman's Tow Head.

A. That's what you call Newman's Tow Head?

Q. Yes; that was Newman's Tow Head, wasn't it?

A. Yes, sir.

Q. Now, before the river came through the sand bar in [fol. 372] 1912, was not there a sand bar that connected this land you rented from Mr. Learned with the Louisiana shore?

A. From the Mississippi shore connected with the Louisiana land?

Q. Before the river came through there?

A. Was the river connected with the Louisiana land?

Q. Just tell me, yes or no.

A. The river run down in front of it and come around there in the bend. They could not get on the island without a boat and could not get across the river.

Q. I am talking about between Newman's Tow Head and Louisiana. Was there a sand bar between Newman's Tow Head that you rented, and the land on the Louisiana side?

A. Was there land between that?

Q. Yes; before the cut-off? Of course, after the cut-off I know that the river was there.

A. You mean that was before the cut-off?

Q. Yes?

A. Was there land between there?

Q. Yes; a sand bar and so forth that you could walk from the island to the Louisiana shore?

A. Let me see—the island—you say was there land between the two—between the island—just like this chute was here (indicating), here was the land on this side, and land on that side. Is that what you ask me?

[fol. 373] Q. I have asked you the question. Now, go ahead and answer it. Answer it in some way.

A. That is what I am trying to get at. I want to answer you in the right way. Say this is the chute like that, and this is land over here, and this land over here, and here is the water—a stream of water in between it. That water would split this.

Q. Between?

A. Just split this open.

Q. Between what?

A. Between Louisiana and Mississippi.

Q. When was that?

A. That was, let me see when was that. That was in nineteen—I married in 1900. I will never forget that—the time I married. I married in 1900, and two years later would be what—what would be two years?

Q. Go ahead, you are talking.

A. Two years earlier, that would get the number of years—about two years later—two years before 1900.

Q. What was?

A. When that stream of water was coming through there.

Q. Where?

A. Between Chotard and Willow Point.

Q. Between Chotard and Willow Point?

[fol. 374] A. Between Mississippi and Louisiana is what I'm trying to get at.

Q. I am not asking you between Mississippi and Louisiana, not any of my questions.

A. That's what you say, ain't it? I can't say that it is Newman's point. I calls it Mississippi.

Q. It don't make any difference to you whether it is Newman's Point, or Mississippi, or Alabama, or what. I am asking you whether, before the river came through there and made the cut-off in 1912, the end of that point there that you leased from Mr. Learned, and which has been called Newman's Tow Head, was or was not connected, by sand bar, with the Louisiana shore. Answer that question yes or no.

A. The Louisiana shore?

Q. Answer it. I appeal to the Commissioner to make him answer the question.

A. The water came in——

Q. I just asked you that question. Answer the question I asked you and then you can make any explanation you desire, but I want you to answer the question yes or no.

A. What is the question?

(Question read by the stenographer.)

A. You have done swore me and I am going to tell the truth.

Q. Read him the question again.

[fol. 375] (Question read by the stenographer.)

A. Connected with the Louisiana shore?

By the Commissioner:

Q. Answer his question.

By Mr. Brandon:

Q. Yes; was it or not?

A. This land in here connected with the Louisiana shore? Do you mean could not get across the river?

By the Commissioner:

Q. Answer the question. Was it or not?

A. Let me see now——

By the Commissioner (interposing):

Q. If you don't know say so.

A. I know it, but I can't get the memory.

Q. Well, then think. We will give you time to think, all you want. Now, was it or not?

A. No, sir; it was not connected.

Q. All right, now go ahead and explain, if you want to.

By Mr. Brandon:

Q. Why is it so hard to answer the questions I ask you and so easy to answer the questions asked you by counsel on the other side?

By Mr. Henry: We shall object to that. It is an argu- [fol. 376] ment he is starting with the witness.

By the Commissioner: Yes; I hardly think that is a proper question.

By Mr. Brandon: Very well, that is all I desire to ask him.

Redirect examination.

By Mr. Butler:

Q. On which side of the river is the land which Newman's Tow Head is now situated? You know as Newman's Tow Head?

A. Where it is now?

Q. Yes.

A. The line between which?

Q. On which side of the river is the property you know as Newman's Tow Head? On the Louisiana side or the Mississippi side?

A. On the Louisiana side.

Q. That is the present river?

A. Yes, sir.

Q. Did you all ever know, or call the island on which you had your hogs, by the name of Newman's Tow Head? Did you ever call it that or not?

A. No, sir.

Q. Then, when you are talking about Newman's Tow Head you are talking about land now on the Louisiana side [fol. 377] of the river from here?

A. From where we got in the boat at?

Q. Yes; across the river?

A. Yes, sir; across—away over on the other side.

Q. What is the land over there where you pointed out the lake and where those big trees we measured—what do you call that?

A. I calls it—I would call it Mississippi.

Q. I am not talking about what state.

A. I calls it home then. That's where I live at.

Q. What is it known as?

A. What's the name of it?

Q. Yes?

A. I calls it St. Francis Chute.

Q. This plantation around the point, what do you call that, where Newmans Tow Head is—what is called Newman's Tow Head?

A. What we call Newman's Toyw Head is way up about where we first got out of the boat. You know where we got out of the boat at the sand bar.

Q. This side or the other side of the river?

A. The other side.

Q. Of the present river?

A. Yes, sir.

Q. What do you call that where you put your hogs?

[fol. 378] A. What do I call that?

Q. Yes?

A. I just call it an island.

Q. Is that the island you refer to as Scruggs' Island?

A. Yes, sir; I just figured it come back from Scruggs' Island. The Sprague sunk four barges there, coal barges.

Q. I don't care about that.

A. I just wanted to tell you.

Q. That is all.

Recross-examination.

By Mr. Dale:

Q. You say that you figured that it came back from Scruggs' Island, the island where you put the hogs?

A. That is what I was figuring when I went over there, when I went there to live there.

Q. Scruggs' Island disappeared, did it?

A. Not all of it. A portion of it did. At low water there would be some of it there. At high water there would not be none of it there. There would not be no land where I lived at.

Q. At high water there was none of Scruggs' Island left?

A. No, sir; none there where I lived.

[fol. 379] Q. And only some at low water?

A. What?

Q. And there was only some of Scruggs' Island left at low water?

A. Yes, sir.

Q. The water had to be very low for any of it to appear?

A. I think 35 feet on the *guage*—25 feet would put plenty of it out there.

Q. Now, the Island which has been called Scruggs' Island, that's the same island you leased from Mr. Learned?

A. I guess it is. I can't tell you.

Q. You don't know?

A. No, sir.

Q. Now, there is a piece of land, an island here, that you have denominated as Scruggs' Island?

A. Yes, sir.

Q. That you claim is Scruggs' Island?

A. Yes, sir;—you say could I swear to it as Scruggs' Island?

Q. You say there is an island called Scruggs' Island?

A. Yes, sir.

Q. Did you lease that island, or a part of it from Mr. Learned?

A. I leased it from Mr. Capt. Reed. He brought the lease [fol. 380] to me.

Q. For that island?

A. Yes, sir.

Q. All the same, the island you call Scruggs' Island is the one you leased from Mr. Learned as the Newman Tow Head?

A. Yes, sir; I thought that is what it was when he came to me.

Q. Was it not exactly the same property?

A. Yes, sir;—just the same ground down there?

Q. Yes; regardless of its name?

A. Yes, sir.

Q. Prior to 1912 did you ever walk over from Scruggs'—what you call Scruggs' Island and the same property you subsequently leased from Mr. Learned, to the Willow Point property in Louisiana?

A. Since 1912?

Q. No, before?

A. Before 1912?

Q. Yes?

A. And walked to Willow Point?

Q. Yes?

A. Well, that would be the island, the way the lease read. You see that would be the lease. It read "Willow Point."

[fol. 381] Q. I am not asking you about the way the lease read?

A. I walked to the island since then from the lower part.

Q. Before 1912 you walked across to that Island from Willow Point?

A. Yes, sir; I walked from the Mississippi shore to that island.

Q. I am not asking you from the Mississippi shore. Do you call the island the Mississippi shore?

A. No, sir; I say that I went over it from the Mississippi shore, over on the island, walking.

Q. I did not ask you in regard to the Mississippi shore. Get that out of your mind.

A. How's that? What's that. I didn't understand.

Q. I say for you to get that out of your mind.

A. All right.

Q. I didn't ask you that. Pay attention to my question. Now, this island that you call Newman's Tow Head that you leased from Mr. Learned, that is the same island you all call Scruggs' Island. I asked you whether you walked from that island across to the Louisiana shore?

A. No, sir.

Q. You never did?

A. No, sir.

[fol. 382] Q. Did you ever know of anybody else doing it?

A. Not that I know of.

Q. Could you at any time have done it?

A. Walked to the——

Q. Louisiana?

A. Walked to the Louisiana shore from that tow head?

Q. Yes?
A. No, sir; not that I know of.

By Mr. Brandon:

Q. You also leased some land from Mr. Learned in Issaquena county, on the Mississippi main shore, did you?
A. I leased his land—Mr. Learned—down in Issaquena county. That is what Mr. Charley Henry told me when he came up there for Capt. Reed.

Redirect examination.

By Mr. Butler:

Q. That land on this side of the river is called Scruggs' Island, and the land on the other side of the river is called Newman's Tow Head—was it both sides of the river?
A. Yes, sir; this same lease. That is what he told me by word of mouth, to keep everybody off of it.

(Witness excused.)

[fol. 383] Etna J. Albrittian, called as a witnes on behalf of the defendant, was sworn and testified as follows:

Direct examination.

By Mr. Butler:

Q. State your name?
A. Etna J. Albrittian.
Q. Where do you live?
A. At 526 North Jefferson.
Q. Jackson, Mississippi?
A. Yes, sir.
Q. Mr. Albrittian, are you familiar, in a general way, with the lands and territory involved in this litigation, the State of Louisiana against the State of Mississippi, in the vicinity of Chotard Landing?
A. Yes, sir.
Q. When did you first know anything about this vicinity, Mr. Albrittian?

A. Well, in July, 1912, I made my first trip up there to look it over.

Q. How did you go?

A. By steamboat from Vicksburg. I think I got off at Duvall's.

Q. Duvall's Landing?

A. In Issaquana county, yes, sir.

Q. At the time you went over there in July, 1912, speak-
[fol. 384] ing generally, where was the main boat channel of the Mississippi river, with reference to the Island known as Tullos Island on the survey of Mississippi of 1823, a copy of which is marked Exhibit X, filed October 5th, 1926, which same island was later known as Island No. 98?

A. Well, we traveled to the east of Tullos Island. The steamboat went into this chute here—left the island to the left of us.

Q. That was the route your boat took?

A. Yes, sir.

Q. Do you know whether or not, at that time, in July, 1912, there was water running between the island and the Louisiana shore side?

A. Yes, sir; it was there then.

Q. Now then, did you go over any part of the land in 1912?

A. Yes, sir.

Q. What part did you go over?

A. I went over the island part.

Q. What sections was that?

A. Well, that would include sections 20, 21,—20 and 21, and a small part of 28.

Q. At that time was the water flowing on both sides of that land you went over, referred to as the island?

A. Yes, sir.

[fol. 385] Q. Now, when did you next visit this property, Mr. Albrittian?

A. Well now, I don't know about the date. I have been up there several times. The next definite date that I can fix would be about the fall or early winter of 1923, but in the meantime I had been there several times. I can not fix the dates.

Q. Now, do you claim any portion of the lands involved in this litigation, and if so, state generally what portion you do claim, with reference to sections?

A. Well, my son and I hold title to sections 20 and 21, and Lots 2, 3 and 4, and the South half of Lots 10 and 28; all section 29; all 30, and other lands surrounding Tullos Island.

Q. As it existed in 1823?

A. Yes, sir; as it existed in 1823.

Q. I will ask you whether or not you are familiar with the locations on the ground?

A. Yes, sir.

Q. Of the lands which you mention as claiming and particularly that embraced within the territory,—within the boundary of the island as it existed in 1823, as shown on said Exhibit N?

A. Yes, sir; I am familiar with the lands,—with the island, especially, because I have investigated them closely [fol. 386] since we made a purchase a few years ago.

Q. Now, I will ask you if you know where Section 21 is, situated on the ground as it exists there today, as located by the surveyor's marks and sticks?

A. Yes, sir.

Q. What is the character of the growth on Section 21, particularly with reference to Lot 5, shown on said Exhibit N?

A. Well, that is cottonwood and willows growing there.

Q. Well, will you state, with Exhibit N before you, about where this southern and western line of the cottonwood timber is, by reference to Lot numbers, or fractional lot numbers that it runs across, as the timber exists now?

A. In lots 3, 4 and 5, in Section 21, there is a belt of large cottonwood and willows, and it runs—it goes up to the river on the west side, and on the east side it is almost exactly parallel with the old shore line.

Q. The old chute shore line?

A. The chute shore line.

Q. How large is that cottonwood growing in that vicinity, Mr. Albrittian?

A. Well, it is 24 to 26 inches in diameter.

Q. Where is the present river with reference to Lots 5, [fol. 387] 4 and 3?

A. Well, according to the survey——

Q. (Interposing.) Section 21 I am talking about, unless otherwise designated?

A. The surveyor set a stake on the river bank at three quarters of a mile. That would be the river bank right there.

Q. Between what?

A. Between there on the boundary line between sections 21 and 28.

Q. At the southwest corner of Lot 4?

A. Yes, sir; the southwest corner of Lot 4.

Q. Of Section 21?

A. Yes, sir.

Q. Then which way does the river run today?

A. The river runs in a northwesterly direction, and stages on out of section 21 about half way between the northeast corner and the southwest corner of Lot 3.

Q. How high is that river bank alog the point you have juest described, from the ordinary stage of the water in the river?

A. Well, three years ago that bank was about 25 feet high. I have seen as much as 25 feet of the bank, but since that time it has filled in to some extent, and it is now only about fifteen feet up.

[fol. 388] Q. At the time that you saw this bank 25 feet high what was the character of the soil extending up through that territory you have just described?

A. That was clay.

Q. Now, what with reference to the timber immediately east of Lot 5 of Section 21, as compared with the timber west of that point?

A. The old channel was clearly discernable across that, and east of that is small willows.

Q. Is or not that old channel clearly discernable there today, of the old chute?

A. Yes, sir; from this point where the present river crosses this old channel it is in Lot 4, Section 28. The old channel is clearly discernable all the way around back to the river.

Q. Now, is there or not any lakes now existing in the old chute or channel?

A. Yes, sir.

Q. And where are those located on the ground?

Q. One on the north end. That would be—well, that lake is about north of Lot 1 in Section 20, and then there is another smaller lake about northeast of Lot 2, in Section 21.

Q. Now, are you also familiar with the lands which originally composed a part of Tullos Island in 1823, as shown [fol. 389] by Exhibit N, and which now lies to the west of the river?

A. Yes, sir.

Q. Now, I refer to Exhibit F to the bill of complaint in this case, and will ask you if you have an exact copy of that map before you?

A. I think it is; yes, sir. It is Chart 47 of the Mississippi River Commission.

Q. Now, as I understand it, Mr. Albrittian, in 1823 the main channel of the Mississippi river run to the west of Section 30 involved in this litigation?

A. Yes, sir; according to the map it did.

Q. Now, I will ask you to refer to Chart No. 47 of the Mississippi River Commission survey, and state what are the physical conditions there on the ground now, in the vicinity of Section 30, of Mississippi, and extending from there on in a northeasterly direction towards Section 20 in Mississippi?

A. Well, the physical condition of the land today, or was when I was up there—I was at Henderson on the 21st day of October of last year, and the river stage was 38.9 at Vicksburg, and the water was backed out to here.

Q. Backed out to where. You see you indicate something that does not go in the record. Call it off in reference to sections?

[fol. 390] A. Well, as a matter of fact we went to Henderson and wanted to get off on Section 30, and we found the old channel full of water, and we thought that we could go north,——

Q. What do you mean by "old channel?"

A. I mean the channel of the river of 1823. We thought by going north up the old river bed that we could surround the water that was backed out in the old river channel. But we did not. We found water all of the way out, and we followed the old river channel clear to where it goes into the river at the north end.

Q. You mean where the old river channel goes into the bed of the river channel?

A. That is it; yes, sir, and the water was coming out from the present river into the old river channel of 1823. Now about a half a mile west—I mean south of the present river down the old river channel of 1823, we came to an open space and we could see across the water. The water was about 200 yards wide at that point, and there was a well defined bank on the east side of it.

Q. And what was the character of the bank on the west side of the old channel, and the side on which you were walking?

A. Well, after a distance of a mile north of Henderson there was no discernable bank line on the west.

[fol. 391] Q. How was it down at Henderson?

A. At Henderson the levee went right up the edge of the old river channel on the west side.

Q. And what was the stage of the river at the time you were there?

A. It was 38.9 on the guage at Vicksburg.

Q. Do you know whether or not that is an accepted guage to determine the stage of the river in this territory?

A. Well, I think it is.

Q. Do you know a place on this Government chart 47 that is known as St. Francis Chute?

A. Yes, sir.

Q. How is that delineated on the chart?

A. It is not delineated on the chart. That is only a local name, and it applies to the old river bed of 1823.

Q. What does this Chart 47 show as to elevations and so forth and as to the existence of water and so forth along this old channel of 1823?

A. Well, down next to Henderson the old channel shows—I can't read those figures.

Q. What does that show?

A. I can't see that.

Q. What is that?

A. That shows the water there.

Q. Water?

[fol. 392] A. Yes, sir; the old channel shows about ten feet lower than the land on either side.

Q. To the west of Section 31 what does the chart show?

A. Well, it seems to show a low place. It is not marked water, but it is not shown to be timber, and the physical situation is that it—this is, in fact, a low place with just bushes on it—small bushes.

Q. Around this low place marked "water" down near Henderson's Point, I see the elevation lines to the west of it, 90 to the west of it, 90 to the east of it, and then west of there, beginning at 95 and 100, and up on the bank beyond the levee, 105. Does the physical indications there on the ground at this time indicate that there was a difference in those elevations there at that point?

A. Clearly. There is a clearly defined channel. I have been across there plenty of times, and there is a clearly defined bank line along here.

Q. Along where?

A. Along section 36 and 31, along in there. I don't know positively where it was because it had not been surveyed when I crossed it, but there is a bank line along in that section, three or four feet high.

Q. Now, commencing at Henderson's Point this Chart [fol. 393] No. 47 shows the elevation of the first point north of Henderson's Point, of 100, and then west of the northeast corner of Section 36 this shows an elevation of 100, and then west of Section 30 it also shows an elevation of 100 for two points, and then immediately west of those elevation marks is this white place on the map?

A. That is a low place there, where this white line is, showing that it is low land, and there is water there lots of times, and I have crossed there and watered a horse right at that place—just about there.

Q. Where is that on the map?

A. That is about opposite a point of Section 30, or about where, if the section line missed 30—if 30 was extended to the range line it would be about where the line struck the range line between Range 8 and Range 9.

Q. Now, I notice on Chart 47, immediately west and running through a part of Fractional Section 30, a point on which the elevation is given as 85, 90 and 95. To the west of that is an elevation of 110 and 105; to the east of that is an elevation of 110 and 105. Now, I will ask you if you

know the situation on the ground as it exists there today at this point immediately west of Section 30, and in the vicinity of these elevations which are marked and shown on chart 47?

A. Well, there is a channel leaving the present river at [fol. 394] this point, which would be about on a line with—boundary line between sections 20 and 29 if extended west to the old river bed of 1823. There is a channel running almost south through the old river bed, cutting a corner of the point of Section 30, on through section 31, to the present river below. Then in the center of the old river bed, at a point about opposite section 30, there is a channel not so deep. That water when we were there was running across this high ground. It was just about the center, or a little east of the center of the river bed of 1823, running from this channel across to this low place and on down to Henderson.

Q. Where was the chute of 1823 on the Mississippi side of Tullos Island with reference to Section 30?

A. Well, the chute run between section- 30 and 31.

Q. Now, what is there on the ground there today, and what is the character of the ground there today at this point opposite section 30 where the old chute was on the map of 1823?

A. There is an old channel clearly discernable. There is a bank about four or five feet high, almost the same width—just about two chains wider than it was in 1823.

Q. Now, do you remember going over there with a darky named Towns, or Townsend, when you made a survey?

[fol. 395] A. Yes, sir; I remember going over there several times with him.

Q. He has testified as having pointed out to you several points in the vicinity of Section 30, and some place where a hatchet was lost, and some trees measured as being a lake in 1900.

A. Well, that hatchet was lost just about the center of this old channel, and just west of the line between Sections 30 and 29, and 31 and 32.

Q. Did he actually point out to you on the ground the place where the old lake existed in 1900?

A. Yes, sir.

Q. Where was that old lake with reference to the chute to the east and south of Tullos Island as it existed in 1823?

A. That lake was in that chute.

Q. I see. Now, Mr. Albrittian, did you examine the character of the growth growing on the land that was embraced within section 30 on the map of 1823?

A. Yes, sir.

Q. What was the character of that growth?

A. Well, there was—do you mean in variety or the size?

Q. Both?

[fol. 396] A. Well, there was cottonwood, willow and oak and sycamore and dogwood, and the sizes run from, that is, in the cottonwood and sycamore—all of the large growing timber—it runs from sixteen inches in diameter to more than three feet in diameter.

Q. Do you recall of ever having measured the circumference of certain cottonwood trees in that vicinity?

A. Yes, sir.

Q. Do you know what they measured?

A. I remember that one measured ten feet and five inches in circumference.

Q. On what part of Section 30 were those particular trees that you measured?

A. Well, they were just east, maybe, of the boundary line between sections 29 and 30, and about five chains north of the intersection of Sections 29 and 30 and 31 and 32.

Q. Where were they in reference to the chute as it existed in 1823?

A. They were just about three chains north of the bank of the chute.

Q. And in what part or portion of the section? You stated that, but I didn't get your answer—the western or the eastern portion?

A. Southeastern portion.

[fol. 397] Q. Of fractional section 30?

A. Yes, sir.

Q. Now, what is there on the ground today making out from Section 30, as located in 1823, towards the present river? Do you remember where we landed there?

A. In the section; yes, sir.

Q. On the west side of the river what was the character of the soil of the ground between there and the timber line of Section 30?

A. Well, there is a belt of cottonwood timber between—in the western part of Section 29, and it extends on down into section 30.

Q. What was there—what is there between the timber line and the present western edge of the water in the river?

A. Well, there is a sand bar between the timber line and the present——

Q. (Interposing.) How extensive is that sand bar, Mr. Brittian?

A. Well, I should—I would think it is probably a quarter of a mile wide from the timber line to the water line.

Q. Do you know where the main channel of the river is there today with reference to what was formerly known and designated on the map as Tullos Island?

[fol. 398] A. Yes, sir.

Q. Where is it with reference to that?

A. The present river crosses Tullos Island, taking a part of section 20, a part of section 29 and a part of section 28, and a small part of section 21.

Q. Now, how is the river located on the ground today as compared with the flow of the water you have mentioned west of the island in 1912 when you went up there and made this trip in the boat, and also inspected the island?

A. Well, the river as it flows today is almost identically in the same place as it was in 1912—where the water was in 1912.

Q. Going back now for a minute to Section 21 about which you testified as the shore line and cottonwood timber and so forth, what is the largest timber on the island or peninsula as it exists today with reference to section 21—the timber on that island?

A. In Lot 3, that part of Lot 3 that is not in the river, and a part of Lot 5—the largest timber would probably be in Lot 3 and Lot 4 in Section 21.

Q. That is the largest of all of that timber on that island?

A. Yes, sir; in 21. Lots 3 and 4 and a part of Lot 5 and a small part of Lot 4 in Section 28 is all big timber.

Q. That is larger than the rest of the growth on the [fol. 399] island, is it?

A. Yes, sir.

Q. Is there anything else that I have not asked you about that you want to make a statement of, or with reference to the character of that land, or the island, the timber, the channel and so forth and so on?

A. Well, I would say this: From the character of the land and the growth, and the channels there to show, I am convinced——

By Mr. Dale: We object to the witness stating his opinion. That is a matter to be drawn by the Court, and the witness should be allowed merely to state the facts.

By the Commissioner: Yes, sir; let him state the facts.

By the Witness: That is all I have to state, is facts.

By Mr. Dale: Certainly, we do not object to your stating the facts, but we object to you stating your opinion.

By Mr. Butler: That is all. You may cross-examine.

Cross-examination.

By Mr. Dale:

[fol. 400] Q. You mention the old chute of 1823, and you have mentioned several old chutes. You don't know, of your own knowledge, that any chute exists there now that existed there in 1923, do you, Mr. Albrittian?

A. The survey shows they are in the same places they were in 1823.

Q. The survey merely shows they are in about the same location, but whether that chute had filled up and another *one* would simply come there at a later date, you can't swear to of your own knowledge?

A. I would not attempt to say, for I have not been living that long.

Q. You never was in that vicinity until July, 1912?

A. Oh yes, sir; but I was not making any special study of the situation.

Q. I just asked you the question if you were in the vicinity of the land in litigation prior to July, 1912?

A. Yes, sir; I was.

Q. You were there before that time?

A. Yes, sir.

Q. When?

A. Well, I would not,—I don't remember the date because——

Q. (Interposing.) You never noticed anything in the [fol. 401] vicinity before that time?

A. No; I did not make a special study of the situation prior to that time.

Q. You did not make a study of the situation at all prior to July, 1912?

A. No, sir.

Q. And therefore, your information or knowledge in regard to this matter would be limited to a period no further back than July, 1912?

A. Well, I studied the records and maps made prior to that time.

Q. Any other information you might have had or have prior to 1912 was drafted from maps?

A. Maps and records; yes, sir.

Q. Now, you spoke of Tullos Island. You don't know, of your own knowledge, whether Tullos Island entirely caved away or not, do you, Mr. Albrittian?

A. Well, of course, I was not there watching it all the time, but there was timber there and there was clay soil there that shows by the character of the land and timber that it was on land that I know did not cave.

By Mr. Dale: That answer, if the Court please, was not responsive to my question, and therefore I object to it.

Ruling reserved.

[fol. 402] Q. That is your opinion of it, that it is the same land. In other words, that is the conclusion you have come to from your examinations?

A. It is the same character of soil and the same character of timber there is east of the present river on land that is known never to have been in the river.

Q. Now, in reference to the character of the timber, the largest tree you found on the island, which is in the location of where Tullos Island was, whether it was Tullos Island or some other island, was ten feet and five inches in circumference?

A. That is the largest one that I measured. I saw a larger one than that but it was before I had the survey made and I could not designate it by section number.

Q. Then, if you did not measure other ones how could you tell it was larger?

A. Easy enough.

Q. Are you trying to show that this timber is larger on the island or it is smaller?

By Mr. Butler: He is not trying to show anything. I don't think that is a fair question.

By the Witness: I am trying to answer questions merely.

[fol. 403] By Mr. Dale:

Q. Are you interested in this litigation?

A. Certainly I am.

Q. Did you go there to hunt small trees or large ones?

A. I have not been hunting any trees at all.

Q. Why did you measure this cottonwood?

A. Just because I wanted to see how big it was.

Q. You did not measure it for the purpose of using it as evidence in this case?

A. I measured it because I wanted to see how large it measured.

Q. Yes, sir; my question was, you did not measure it for the purpose of using it as evidence in this case? Or were you hunting for those trees just as a mere matter of curiosity?

A. I measured it as a matter of information.

Q. I will repeat the question. Did you or not measure it for the purpose of using the measurement as testimony in this case?

A. Not purely; no.

Q. Did you do it at all for that purpose?

A. I had not had an investigation sole in mind.

Q. Then, if you did not measure it for the purpose of using it as evidence in this case, why did you measure it?

[fol. 404] A. I told you I measured it to see how big it was.

Q. Just simply to see how big—as a matter of idle curiosity to see how big it was?

A. And for information, as I told you.

Q. Just for general information. Do you go all over Mississippi territory generally to measure trees just for information?

A. Well, I do a good many—a good deal of the time, because I have been interested in timber and in timberlands for a good many years.

Q. And on some land that you are interested you measure the circumference of trees, do you?

A. Sometimes I do, sure.

Q. Where did you ever do that before on land that was not in litigation?

A. I did it once, for example, in Jefferson county.

Q. Mississippi?

A. Yes, sir.

Q. Where did you do it again?

A. Down on Pearl River, in Rankin county.

Q. And where again?

A. Well, I will not say right now. I don't recall any other places right now.

Q. Now, you make it a purpose to go around measuring trees just out of curiosity?

[fol. 405] A. I am a timber estimator, and that is one thing I do. I do a great deal of it.

Q. Does a timber estimator usually measure the circumference of trees?

A. They frequently do.

Q. Is that the custom or rule of a timber estimator?

A. Well, it is one method of ascertaining the number of board feet.

Q. Another method would be to cut the tree down and saw it up?

A. But you can't always do that.

Q. A timber estimator does not do that?

A. He does not cut it down.

Q. They generally measure the circumference, do they?

A. Sometimes they do.

Q. I am not asking what just one will sometimes do, but what will they do as a rule?

A. Well, they sometimes do it.

Q. Do you refuse to answer the question whether as a rule they do it?

A. I will not attempt to answer for another man, and tell what he will do. I can't tell what another man will do.

Q. Are you a timber estimator?

A. Not professionally; no.

[fol. 406] You don't know whether a timber estimator measures the circumference of trees or not, do you?

A. I have seen them do it.

Q. But you refuse to answer my question as to whether it is in general use?

A. I am not going to speak for others, for I don't know what they do, as a general rule.

Q. Why didn't you measure the small cottonwood just like you measured the big one?

A. One reason was I had no tape line with me when I saw the big one.

Q. Where was the big one—that big tree you are talking about?

A. It was about the point of Section 29, but the land had not been surveyed at that time and I could not give the definite location.

Q. Do you think you could find it again?

A. I know I could.

Q. How much larger was it?

A. I would say that it was four feet in diameter.

Q. Did you find that since you measured this ten foot five inch cottonwood in circumference, or before?

A. Before.

Q. If you found it before why didn't you go there and get the measurements?

[fol. 407] A. Because we were walked down, that is why.

By Mr. Butler: I will testify to that myself, Judge.

By Mr. Dale:

Q. Did you measure any oak?

A. No, sir.

Q. What was the diameter of the oak you found?

A. Well, as I remember, about sixteen to eighteen inches.

Q. Where were those located?

A. On the boundary line between Sections 29 and 30.

Q. How many of them did you find?

A. I would not attempt to say. I did not make an effort to count them.

Q. Were they a few or large in numbers?

A. Just a few.

Q. Just a few?

A. Yes, sir.

Q. The largest ones you saw were approximately sixteen inches in diameter?

A. Sixteen or eighteen. I was not paying particular attention as to their size.

Q. How far from the ground?

A. Well, I would say two feet from the ground.

[fols. 408 & 409] Q. How far from the ground did you measure this cottonwood that measured ten feet five inches in circumference?

A. About two foot from the ground.

Q. Was that a swelled butt tree or not?

A. No, sir.

Q. How many sycamore trees did you see?

A. I would not attempt to say how many. There was not so many.

Q. Not many sycamores?

A. Not so many, but I saw some. I don't remember how many.

Q. What was the largest sycamore you found in diameter?

A. I did not pay any attention to its size at all.

Q. Was it more than sixteen inches in diameter?

A. Probably not.

Q. What was the size of the dogwood you found in there —little scrubby growth?

A. Yes, sir; it was about, as I remember it, about four inches in diameter.

Q. How many dogwood did you find?

A. I only noticed one.

Q. How many sycamore?

A. I did not notice. I did not count them.

[fol. 410] Q. And you did not notice how many Oak?

A. No, sir.

Q. Isn't it a fact that it was just a scrubby growth of oak that you found?

A. No, sir.

Q. Wasn't it now what you would call a scrubby growth?

A. It was a healthy tree, as I remember it,—not any scrub oak at all.

Q. You spoke of a survey being made there on your direct examination. Do you know when that survey was made?

A. Yes, sir.
Q. When?
A. In September of 1924.
Q. Who made that survey?
A. Hull—W. M. Hull.
Q. Who is W. M. Hull?
A. He is a surveyor who lives in Rolling Fork. He lived there at that time.
Q. Rolling Fork, Mississippi?
A. Yes, sir.
Q. Do you know whether he is a licensed surveyor?
A. I don't know about that.
Q. Other than from what you have mentioned about the growth of the timber, and there being clay on the soil, and [fol. 411] the elevation of the soil, you can't tell whether Tullos Island, or Island 98, as it existed originally, had all caved away or not, other than it is your opinion that it did not, from those facts?
A. Well, there are not any indications that it did, taking the facts as they are.
Q. You don't know. There is nothing to indicate to you—there are no facts you could see outside of that, that it did not?
Q. Well, of course, I don't know, because I have not been living all that time, but every indication is that it did not.
Q. Well, you have no knowledge of that except that which you have drafted—no personal knowledge except that which you have drafted since July, 1912?
A. That is all.
Q. You tstified that you owned a part of the land. When did you buy it, Mr. Albrittian?
A. Well, we bought some in 1923 and some in 1924, and I think we bought some since that.
Q. From whom did you buy it?
A. The State of Mississippi.
Q. It was sold at tax sale?
A. Forfeited to the state.
Q. And you bought it from the state.
[fol. 412] A. We bought it from the state.
Q. You don't know for what years it purports to have been forfeited, do you?

A. Well, we have a record of it, but I don't remember the dates.

Q. You don't know what year the sale was made to the State do you?

By Mr. Sharp:

If you will pardon me, it is in that exhibit there. You will find it in that exhibit.

Q. You have been paying taxes on the land that you purchased since 1923—since the purchase?

A. Yes, sir.

Q. Do you know, of your own knowledge, how long prior to that time, before any taxes had been paid on it?

A. Well, they paid all the time, according to the record, up to the time that they were forfeited to the State. After they had been forfeited to the state nobody paid taxes on them until we bought them.

Q. I think that is all.

(Witness excused.)

[fol. 413] By Mr. Creekmore: We offer a certified photostatic copy of a map of Issaquena county, from a survey compiled under authority of the State Legislature, by act approved May 10, 1871, and certified to by R. D. Moore, Land Commissioner, which we will ask to be marked Exhibit V on behalf of the defendant.

Document handed to the stenographer, and marked Exhibit V for the defendant.

By Mr. Creekmore: And in connection with Exhibit V we offer an enlargement of the same map, being a photostatic copy, and will ask that it be marked Exhibit V-1 on behalf of the defendant.

Document handed to the stenographer and marked Defendant's Exhibit V-1.

[fol. 414] At this point, by agreement, an adjournment is here taken until January 19, 1927.

[fols. 414½ & 415] IN THE SUPREME COURT OF THE UNITED STATES

VOLUME THREE—TESTIMONY TAKEN AT JACKSON, MISSISSIPPI, IN THE SENATE CHAMBER OF THE NEW CAPITOL BUILDING, JANUARY 19TH AND 20TH, 1927

[fol. 416] Jackson, Miss., January 19, 1927.

Met pursuant to adjournment heretofore noted.

All parties interested present, when and where the following proceedings were had:

The complainant, having reserved the right to offer and introduce further testimony, then and there offered the following:

By the Complainant

E. T. PURNELL, called as a witness on behalf of the complainant, was sworn and testified as follows:

Direct examination.

By Mr. Dale:

Q. What is your name?

A. E. T. Purnell.

Q. When were you born?

A. I was born in 1866, on the 11th of February.

Q. That would make you about sixty-one?

A. I will soon be sixty-one.

Q. Are you acquainted with the vicinity of Albemarle Bend, in Mississippi?

A. Yes, sir.

[fol. 417] Q. The point near the point in litigation in this case?

A. Yes, sir; I know it pretty well.

Q. You are pretty well acquainted with it?

A. Yes, sir.

Q. Did your father live in that vicinity, and did you ever live in that vicinity also?

A. Father moved from Rankin county in 1867 to land owned by the Peebles Estate of South Louisiana, and after being there and opening up a good deal of the land, the

estate sold the Mississippi body of land, the main body of land, and deeded father 400 acres of land above the Island 98.

Q. Did your father move to that place?

A. Yes, sir.

Q. What year did he move there?

A. We moved up there in 1880.

Q. Now, prior to the time that you moved to the Purnell place opposite Island 98, where did you live just prior to that time?

A. We lived on what — known as the Belleview Plantation owned by Dr. W. G. Kiger.

Q. When did you move to Belleview Plantation, Mr. Purnell?

A. In 1867.

[fol. 418] Q. How long did you live on the Belleview Plantation, if you recall?

A. From 1867 until 1880.

Q. From 1867 until 1880?

A. Yes, sir.

Q. And you moved immediately from the Belleview Plantation to the Purnell Plantation?

A. Yes, sir.

Q. How far above the Belleview Plantation is the Purnell Plantation?

A. There is the Chotart Plantation in between. I don't know exactly how wide it is.

Q. Who do you say the Belleview Plantation was owned by, Mr. Purnell?

A. When do you mean?

Q. Who?

A. I say at what time do you mean?

Q. Well, when you left there?

A. It belonged to the Peebles Estate of South Louisiana.

Q. Did any one else afterwards acquire it?

A. Dr. W. D. Kiger.

Q. Will you look at the Map marked Exhibit C, Sheet 17, of the Mississippi River survey, and state whether or not the place marked "W. D. Kiger" on the map, just below Ingomar Post office on same is what you call Belleview Plantation?

[fol. 419] A. I am not much on those maps now.

Q. It is just below Chotard——

By Mr. Henry (interposing): Wait a minute. He says that he is not much on maps.

By Mr. Dale:

Q. Just put down what he says. Not much on maps. Now, this is Chotard Landing.

By Mr. Henry: Let him find it.

By Mr. Dale:

Q. Without regard to the map, do you know where Chotard Landing is with reference to Belleville Plantation?

A. Just north of it.

Q. Just north of it?

A. Yes, sir.

Q. Can you find it on the map here?

A. I can find it where it says it is. It is there; yes, sir. That is it there.

Q. Now, this place marked on the map, "Dr. W. Kiger," just below Chotard Landing, is that or not the Belleview Plantation?

A. As far as I know it is; yes, sir. There is no other plantation in there whatever.

Q. What is your father's name?

[fol. 420] A. William Purnell.

Q. How was it spelled?

A. P-u-r-n-e-l-l.

Q. Where did your father's place lie on the Mississippi river with reference to the Maj. Higgins place?

A. Adjoining it on the south.

Q. The place adjoining Maj. Higgins place on the map is spelled P-a-r-n-e-l-l.

A. It should be P-u-r-n-e-l-l.

Q. Your father's name was not spelled P-a-r but P-u-r?

A. Yes, sir; Purnell.

Q. Purnell and not Parnell?

A. That is right, Purnell.

Q. Where did that place lie with reference to Island 98?

A. Directly east of it.

Q. The W. Purnell place was in the State of Mississippi was it?

A. Yes, sir.

Q. What water was immediately west?

A. A chute between Island 98.

Q. Where was the main channel of the river?

A. West of 98.

Q. How long did you live at the place marked "W. Pur-
[fol. 421] nell" on the map?

A. I was there from 1880 to 1897, in January.

Q. Continuously?

A. Well, a few months may have intervened.

Q. Well, I mean you lived there?

A. Yes, sir; that was my home.

Q. Now, what familiarity had you with Island 98, if any?

A. Well, I have been on it hundreds of times—hunted on it.

Q. Tell everything you can think of in connection with Island 98 that would show your peculiar familiarity with it?

A. Well, I know for one thing, it had very heavy timber on it. You could not see anything through there, and I have swam across from the Mississippi side, from the land over to the island. In fact, at one time I came mighty near getting punished for it. Father sat on the bank and waited until I came back and told me that if he caught me at it again he would do something about it.

Q. You say you have been on the island hundreds of times, Mr. Purnell?

A. I would say that I have. In my boyhood days I used to hunt across there. I used to hunt across there a good deal.

[fol. 422] Q. What was the size of the timber on the island?

A. Well, it was all virgin growth. Now, there was oak and gum, and I would judge that it was four feet—some as much as four feet through. And there was several of the very large size of cottonwood, and one especially, we knew it as the "Big Tree" on the island, and I judge it to be seven or eight foot through. That was the western part, and while I use that statement west, on the east of us in the swamp there was a big cottonwood tree that we measured, four feet from the ground, that run, I think, thirty-seven feet.

Q. Around?

A. Yes, sir.

Q. You mean by that in circumference?

A. Yes, sir; and over on the island were some big trees somewhat smaller than that, but not quite as large.

Q. Nearly as large?

A. Pretty near; yes, sir.

Q. There is no question about it being virgin timber on the island when you first knew it?

A. None whatever.

Q. Where was the main channel of the river? Between the island and the State of Mississippi, or between the Island and the Louisiana shore?

[fol. 423] A. On the west side of the Island—heaviest against the island.

Q. You mean the deepest part of the channel was over next to the Island?

A. Yes, sir.

Q. Was the channel, at any time, between your farthest recollection of that place in 1867 and in 1897 between the Island and the Mississippi river?

A. No, sir.

Q. The channel never was between the island and the Mississippi river?

A. No, sir.

Q. Did the boats ever run between the island and the Mississippi shore? Where was the main channel of the river with reference to Island 98 during all that time?

A. Directly west of it and on the edge of it.

Q. Did any boats ever run between Island 98 and the Mississippi main shore?

A. We used to have a Bend Boat, a Vicksburg and Greenville packet. If they had a load of freight for our place we got the Captain to run up the chute and come to our landing. But as a regular thing the boats did not run through there.

Q. When could they run up the chute and come to your [fol. 424] landing, would that be during high water or low water?

A. High water.

Q. Could they do that in low water?

A. No, sir.

Q. When you first knew Island 98 you say the deep part of the channel of the river was on the west side of the Island?

A. Yes, sir.

Q. Next to the Island or next to the Louisiana shore, Mr. Purnell?

A. Next to the Island.

Q. When did you first observe the island on the western side caving, if it ever caved?

A. The first time that I ever crossed the island to the other bank. I don't know the exact year, but it was in my younger days.

Q. Before you were grown?

A. A long time before I was grown. Probably it was when I was ten years old.

Q. It was caving then?

A. Yes, sir.

Q. Do you know whether or not that caving continued?

A. To the best of my knowledge it did.

Q. You lived opposite the island, I believe you said, Mr. Purnell?

[fol. 425] A. Yes, sir.

Q. Do you know whether it did or not?

A. I am confident it did. Yes, sir; it did.

Q. It did?

A. Yes, sir; I can give you my reasons for it if you want me to.

Q. All right?

A. When we moved up there in '67 the island, at its widest part, was about a mile and a half wide, and from five to seven miles long, and it caved continually, shorter and narrower from that time on.

Q. Do you know whether or not the island ever entirely disappeared, Mr. Purnell?

A. Yes, sir.

Q. Do you know about when it disappeared?

A. Either in 1894 or 1895, during the high water of either one of those two years, but I am not positive. It was during one of those two years, during the high water. But, as I say, I am not positive which.

Q. Did you say that it disappeared or not?

A. It did.

Q. Then, how did it disappear?

A. It washed out entirely.

Q. There was not a vestage of it left, of any sort?

[fol. 426] A. No, sir.

Q. Up to the time of the disappearance of that island,—of the complete disappearance of that island, where was the main channel of the river?

A. It was to the west of the island.

Q. Do you know whether or not there was any tow head over on the Louisiana side opposite the island?

A. It was then building up a tow head, and as the years went on it grew larger and larger. The tow head was on the Louisiana side, and in high water boats could go between it and the Louisiana shore,—make the cut off. They would do that to keep from going all the way around the bend of the channel.

Q. At all times where was the channel of the river with reference to that tow head up till 1897,—up until the time you left there?

A. East of it.

Q. Towards the Mississippi side?

A. Yes, sir.

Q. Now, do you know Mr. R. E. Foster?

A. Yes, sir.

Q. Do you know where his Magna Vista plantation was?

[fol. 427] A. Magna Vista?

Q. Yes, sir. Did you know where he lived, Mr. R. E. Foster? Did you know where he lived?

A. Yes, sir; he lived on Cottonwood Plantation at Shilo Landing.

Q. Is that on the Mississippi river?

A. Yes, sir.

Q. How far above where you lived, Mr. Purnell?

A. It is ten or twelve miles.

Q. Do you know whether he moved from there to any other place?

A. He did not.

Q. He lived there all the time?

A. All the time. He has been living there continuously.

Q. Do you know whether or not he owned other property?

A. No, sir; I do not.

Q. He must have owned other property?

A. Possibly so.

Q. You don't know whether he visited the Magna Vista plantation often or not, do you?

A. No, sir; I do not.

Q. Did you see Mr. Foster very often?

A. Very seldom.

Q. He did not visit your section very often?

[fol. 428] A. No, sir.

Q. Do you know who owned the place just north of Maj. Higgins during the time you lived there in that section?

A. There were several people on it at different times while I knew it, but I don't know that I ever knew who owned it, Judge. I know of several different people being on it, but I can't say that I know who owned it.

Q. What was that place called, Mr. Purnell?

A. It was called Albemarle.

Q. Albemarle is marked on the map just above Maj. Higgins, as you state. Was there anybody ever on there by the name of Chilton?

A. John M. Chilton; yes, sir. He had it leased. He did not own it, but he had it leased for a term of years.

Q. Did Mr. Foster ever own that place?

A. Not to my knowledge.

Q. Did he ever have it leased or have charge of it that you know of?

A. I have never known of such a thing. I never knew it if he did.

Q. If he did you say that you never knew it, Mr. Punrell?

A. It he did I never knew it; no, sir.

[fol. 429] By Mr. Henry: The witness says that he don't know who owned it.

By Mr. Dale: I know he said that, and I want it in the record just like he stated it, and I am sure it is in there.

Q. Now, do you know the place that is now Albemarle?

A. Ingomar.

Q. Do you know who owned that?

A. No, sir; I do not. I know who lived on it for a long time.

Q. Who?

A. A. D. Hughes.

Q. Do you know whether or not a C. Smith——

A. (Interposing.) C. Smith was his brother-in-law.

Q. C. Smith was a brother-in-law of Hughes?

A. Yes, sir.

Q. Do you know whether or not Mr. Foster owned or controlled that property?

A. I do not.

Q. Did you ever see him on it or about it?

A. No, sir.

Q. Do you know the Burleigh plantation?

[fol. 430] A. Yes, sir.

Q. Do you know where that place was with reference to Ingomar?

A. North of it.

Q. Do you know who owned that?

A. In my younger days it belonged to a man we called Dr. Dunn, but I don't know his initials, and I don't know who acquired it since.

Q. Did you ever know of Mr. Foster being in charge of that property?

A. No, sir.

Q. I will ask you now whether or not you ever knew Cottonwood plantation? Cottonwood Landing, I mean?

A. I have never seen a boat at it. I have heard of it, Judge. I have heard of it, but never saw a boat at it; no, sir.

Q. There is a landing called Cottonwood Landing?

A. I have heard of Cottonwood Landing.

Q. Do you know whose place Cottonwood Landing was on?

A. I never saw a landing, but it was known as Mr. Foster's landing.

Q. Cottonwood Landing was known as Foster Landing?

[fol. 431] A. Mr. Foster's landing; yes, sir.

Q. Do you know whether or not Mr. Foster lived there, Mr. Purnell?

A. He lived on the Cottonwood place; yes, sir.

Q. Was that near the landing?

A. The landing was supposed to be in front of it.

By Mr. Henry: Just wait. We object to what he supposes. Let him state what he knows.

By Mr. Dale:

Q. State whether——

A. (Interposing.) Just put me down as saying that I was never at the landing.

Q. I will ask you whether or not at the time you say Island 98 was caving away, whether or not land was being made on the Louisiana shore opposite?

A. We could see that it extended out there each year after every freshet of water; yes, sir.

Q. It extended further and further?

A. Further towards the east, towards the Mississippi shore.

Q. Have you ever been on Willow Point? That is the Newman property?

[fol. 432] A. Yes, sir; I have been there. Been on the main land.

Q. You said there was a tow head near that. Have you ever been over on the tow head?

A. I was on the bar after the water was down—leave the tow head off—I was on the bar when I was a boy; yes, sir.

Q. When the water was low was there dry land or not from the tow head to Willow Point?

A. Yes, sir. I can give you my reason.

Q. All right?

A. I went across in a skiff from our old cabin home. That was when we lived down at Belleview, and got my brother.

Q. Went across there? Where?

A. Yes, sir; to the bar on the Louisiana side.

Q. When you say the bar do you mean Newman's tow head, or the other part of the bar beyond it?

A. The bar, extending towards Mississippi from the main land.

Q. That was higher further inside, or do you know about that, Mr. Purnell?

A. I don't know.

Q. You don't recollect?

[fol. 433] A. No, sir.

Q. Well, do you know whether beyond what you spoke of as the tow head there was any depression, or where the water was, whether it was lower in between there and the main bank or not?

A. In high water; yes, sir. In high water the boats used to make a cut off through there.

Q. And go through between the tow head and the main land?

A. Yes, sir.

Q. Now, in low water, the place where boats went through in high water, was connected with the main land, was it?

A. Yes, sir.

Q. Do you know whether one could walk from the main land to the tow head?

A. Yes, sir; I went over there in a skiff after my brother, who had gone to visit Walter Newman, and he came across the bar to me, on foot.

Q. On foot?

A. Yes, sir.

Q. And walked over to the tow head?

A. Walked over past the tow head to my skiff at the edge of the bar.

Q. And you took him across the Mississippi river back [fol. 434] to your home?

A. Yes, sir; back to our home.

Q. Where was the channel of the river with reference to that tow head and Island 98 during all of your recollection, Mr. Purnell?

A. It was on the Mississippi side, on the west of the island, is all that I know.

Q. And on which side of the tow head?

A. East of the tow head.

Q. And west of the Island?

A. Yes, sir; and closer to the island.

Q. That is all.

Cross-examination.

By Mr. Creekmore:

Q. When did you say you moved to Belleview?

A. Moved to Belleview plantation?

Q. Yes, sir?

Q. In 1867.

Q. How long did you remain there?

A. Until 1880.

Q. Now then, Belleview is how far south of the south point of Island 98, as you knew it?

A. When we went there Belleview was facing the Island.

Q. Belleview was facing the island?

[fol. 435] A. Yes, sir.

Q. Facing the Island?

A. Yes, sir; and the island extended down, all down on the front.

Q. Did you go farther south than Belleview?

A. I can't say.

Q. But you do know that it came as far down?

A. Yes, sir.

Q. Now, Belleview is what is shown on the map that Judge Dale has here as the Dr. W. Kiger plantation? This map here is the one I am talking about. It was known as the Dr. W. Kiger plantation?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. And that is south of Ingomar Post Office?

A. Way south of it; yes, sir.

Q. Way south of it?

A. Yes, sir.

Q. The island you are talking about extended as far down as Belleview plantation?

A. Yes, sir.

Q. I am not talking about the island that only came as far down as the Brown place as shown on the map?

[fol. 436] A. That is the same island.

Q. That is the same island?

A. Yes, sir.

Q. Do I understand you to say that the map incorrectly shows the island as you recollect it?

A. No, sir; outside of my testimony let me explain something to you.

Q. You can give it in as testimony and then explain it. Whatever explanation you care to make can go in the record, Mr. Purnell?

A. All right. Down Chotard, around on the Belleview front, there was a piece of land that lay between the Belleview plantation, or a part of it, and the Mississippi river. We called it Lower Chotard, and Gabe Brown had a store down there, and the old Chotard landing was on this piece of land, out in front of Belleview, and the island extended down to that.

Q. Down to Old Chotard Landing?

A. Yes, sir.

Q. Now, come here, and let us look at the map, please Mr. Purnell. Do you see the marks on the map, "Chotard Landing" right where my finger is?

A. This place here?

A. Yes, sir; right there on the map where my finger is pointing, Mr. Purnell?

A. Yes, sir.

[fol. 437] You see the island, the point of the island, is some distance north of that point, do you?

A. Yes, sir.

Q. Now, as I understand you, you say the point of the island was away down here by the Kiger plantation, Belleview? The Kiger Plantation or Belleview plantation?

A. When we moved up there it did.

Q. It did?

A. Yes, sir.

Q. Now, you say the island was washing?

A. Yes, sir.

Q. Where did it wash from? The south, north, or the middle portion of the island?

A. It washed all the way down it. It washed all the way down it. It cut from the upper part of it, the width of it to a point, and it washed this side the point, and gradually worked up—worked up—all the way up until about 1894 or '5, one of the two years, when a freshet took it all out.

Q. What part of the island was the last to wash away?

A. The part in front of Eustatia and Auraton plantation.

Q. You testified, I believe, as to the size of the Island in 1867?

A. Yes, sir.

[fol. 438] Q. What was the size of the island at that time?

A. We claim it—in talking, I get it from the testimony of the family—of course, I was too young then—I was about most a year old—that it was about a mile and a half wide at its thickest part towards the north, and from five to seven miles long.

Q. You were a year old at that time?

A. Yes, sir.

Q. In '67?

A. Yes, sir.

Q. You know absolutely nothing about the size of or the shape of the island at that time, do you?

A. Nothing at all; no, sir.

Q. And so when you told counsel that you knew about that fact you were simply stating something that you had heard from someboly else?

A. I was told that I was born by my family, and that is the only way that I know that I was born, and that is the only way I know the time. That is the way.

Q. That is the way you know this?

A. Yes, sir.

Q. And you are stating something about which you have been told?

A. Yes, sir; up to the time that I was eight or ten years [fol. 439] old. From then on of course I knew.

Q. So you do not claim to have had personal knowledge of this island in 1867?

A. No, sir.

Q. Now, when do you, or when did you first have any distinct personal recollection of the island?

A. It was in about '77 or '78. At that time I was old enough to know and did know.

Q. At that time in '77 or '78, did the island extend as far south as Belleview or Kiger plantation?

A. Yes, sir.

Q. It did?

A. Yes, sir.

Q. I hand you now a map of the Mississippi River Commission, Chart 46, which has already been introduced in evidence, being Exhibit Number,—I can't find the marking on it, and we will leave it blank for the present and supply it afterwards when we find out what exhibit this is. This map purports to have been made in 1879?

A. Yes, sir.

Q. The point of the island—that shows the point of the island as it originally was. It shows the point of the island as of the date of the map about midway of Section 28, from near the south or slightly south of the mid-way point, while [fol. 440] the Kiger plantation is shown to be a half a mile or such a matter south of that point?

A. Of this point?

Q. Yes, sir; of the lower point of the island.

A. When was that date?

Q. In 1879?

A. In '79 we lived on a part of Belleview here. Here is the island. Chotard was, as I told you, in front of Belleview. You see this was Gabe Brown in here. We lived here, up on the upper end of Belleview. That was in '79.

Q. Northwest of 33 that is?

A. We lived right in here, and in that year, '78, I went around the point of this island which extended below our home. I went around behind this island and went over here to the Louisiana side.

Q. So you had to go south around the point of the island?

A. Yes, sir.

Q. And this map showing the point of the island up in Section 28 is incorrect?

A. For what year?

Q. In '79?

By Mr. Dale:

That is objected to for the reason that there is no evi- [fol. 441] dence that in 1879 Island 98 extended only to the middle of or a little south of the middle of Section 28. Therefore, it is not fair to ask the question of the witness whether or not the map is correct?

By Mr. Creekmore: Of course, the question is asked on the theory that the evidence does show the point of the island was as shown on the map. The map shows it.

By Mr. Dale: But the map does not show the date this survey was made.

By Mr. Creekmore: Yes, it does show here that it was made in 1879-80.

By Mr. Dale: It says "projected."

By Mr. Creekmore: That is the only way that you can make a map. You project it from your survey.

By Mr. Dale: Let our objection be noted in the record.

By the Commissioner: Note his objection, and proceed, Mr. Creekmore.

By Mr. Creekmore:

Q. So this map is wrong, according to your recollection? [fol. 442] A. Yes, sir.

Q. And if the map is right your recollection is wrong, Mr. Purnell?

A. My recollection is not wrong.

Q. Your recollection is not wrong?

A. No, sir; I went from our old cabin home over there in '78 and got my brother when I had to go below it and know that it was up in front of Belleview.

Q. That trip was made when you went there to get your brother when he went over to make a visit to Walter Newman, was it?

A. Yes, sir.

Q. He had walked across, you say, from the towhead—from the Louisiana shore?

A. Yes, sir.

Q. How did you know that he was over there at that point?

A. We had had some two or three days before that a country dance on our side of the river, and Walter Newman came down to Henderson and came to the dance. My brother, being a friend of his, went over with him, went back down and crossed over and went up to his house. He stated that is where he went. They said they were going [fol. 443] there. He said to me, "Now, Ed, Thursday—I'm going to be over there a couple of days,—come across and get me." And I went.

Q. You went pursuant to that agreement?

A. Yes, sir.

Q. Was there anybody with him when he was coming over there?

A. No, sir.

Q. All you know except from the statement that he made to you there as to how he reached that point, is what he told you?

A. Of course I will not swear to that.

Q. That's another hearsay statement, is it not?

A. I don't think that you could hardly call it that. I don't think you could call it that.

Q. Do you know anything about how he got there other than what he told you?

A. Only that he came to me on foot across the bar.

Q. That, you say, was in the year '78?

A. In 1878 or '79, I forget which.

Q. In '78 or '79?

A. Yes, sir; it was '78 I think.

Q. When you went over there did you go to this towhead or sand bar, or Hopkins' Island?

A. I went on a sand bar on the west side from Hopkins [fol. 444] Island.

Q. Would it still be Hopkins Island?

A. Yes, sir; I have seen it.

Q. Where was Hopkins Island?

A. Northwest of 98 Island.

Q. Northwest of 98 Island?

A. Yes, sir.

Q. When was the first you knew of Hopkins Island?

A. Personally, I knew of it before we went up on our new place, because I pulled around the island and went up on it and hunted.

Q. That was before 1880?

A. Yes, sir.

Q. You left Belleview in 1880?

A. Yes, sir.

Q. What direction was Hopkins Island from this towhead or sand bar you landed on when you got your brother?

A. You might say in a northerly direction.

Q. Up the river, in other words?

A. Yes, sir.

Q. Up the river?

A. Yes, sir.

Q. Is Hopkins Island still over there?

A. I don't know. I have been away from there so long [fol. 445] I don't know whether any is left there or not.

Q. When you left over there in 1897 was Hopkins Island still there?

A. There may possibly have been a little of it, but the main portion had caved off of it. I don't know whether there was any left on the upper end or not.

Q. When was the last time you saw the Hopkins Island, Mr. Purnell?

A. I don't know. I don't know when I did see it last. I don't know—don't remember.

Q. You don't know?

A. No, sir; don't remember.

Q. What water formed Hopkins' Island?

A. Do you mean what year? What high water?

Q. No; what was on—What water was on the east of Hopkins' Island?

A. Part of the Mississippi river.

Q. On which side of the main channel was Hopkins Island?

A. A greater portion of Hopkins Island was on the west, and I am not positive whether it stayed that way all of the time or not.

Q. You mean it may have gotten over on the east side?

[fol. 446] A. The river changed in there—the current changed at one time. It is possible that it could be one way and possibly it was another. I could not keep up with it, you know.

Q. Let us take the first time that you knew Hopkins Island?

A. Yes, sir.

Q. About when was that?

A. Probably in '78.

Q. In '78?

A. Yes, sir.

Q. The river then was on what side of it?

A. On the main side then—on the Mississippi side.

Q. On the Mississippi side of the island?

A. Along the east side.

Q. The Mississippi shore?

A. Yes, sir.

Q. The river was between the main shore and Hopkins Island?

A. Yes, sir.

Q. What was there between Hopkins Island and the main Louisiana shore?

A. A stream of water through there.

Q. Stream of water through there?

[fol. 447] A. Yes, sir.

Q. What was it called?

A. I don't know that it was called anything except the river.

Q. Was it one prong or branch of the river?

A. I judge it was judging the way that it went around and then there was another one that went through so as to make an island out of Hopkins Island.

Q. What was the character of that water between Hopkins Island and the main shore of Louisiana, the width and depth?

A. A good width of it, and deep.

Q. A steamboat channel, was it?

A. Yes, sir.

Q. Now, I hand you a map marked Exhibit H. to the bill of complaint in this case which shows Hopkins Island by dotted lines here in 1870, and shows——

A. (Interposing.) Is this Hopkins Island?

Q. Well, I don't know which is. I am just telling what the map shows. The map shows that this is Hopkins Island here, you see,—along here.

A. What's this here?

Q. That's a sand bar.

A. This is what I have always known as Hopkins Island.

[fol. 448] Q. That bar there?

A. Yes, sir; to the northwest of the top end of Island 98.

Q. Shown on the map you are looking at as "High Bar?"

A. Yes, sir.

Q. And having on the lower left hand corner of it the words, "1882 Bar Line."

A. Yes, sir.

Q. That is what you understood as Hopkins Island?

A. Yes, sir; that is what I have always known as Hopkins Island.

Q. This map shows what you say was what you thought was Hopkins Island, on the east side of the mid-river channel, does it, as shown by this map?

A. Yes, sir; it looks that way to me.

Q. And where the chute goes between it and Island 98?

A. Yes, sir.

Q. So Hopkins Island, as shown on the map, Exhibit H, was in 1882, occupied by the bed of the river, was it?

A. I can't tell you that.

[fol. 449] Q. You don't know about that?

A. No.

Q. Now, you see on the map which the complainant introduced, the south end of Island 98 in 1882 comes just below the center of Section 28?

A. Yes, sir.

Q. Does it?

A. Yes, sir.

Q. While the Belleview plan-tion is down here in the northeast corner of Section 33. This map that the complainant introduces in evidence is wrong, according to your recollection, of the lower part of the island?

A. Yes, sir.

Q. When was it that you first went over on the west side of Island 98 and saw that it was caving?

A. Ever since I was able to pull a skiff—when I was seven or eight years old.

Q. That would make it about 1873 or 1874?

A. Somewhere along there.

Q. It was then caving?

A. Yes, sir.

Q. At what end?

A. All down the west side.

Q. All the way down—where was the greatest caving [fol. 450] going on?

A. I can't tell you.

Q. You don't know?

A. No, sir. It was continually washing away at the western side.

Q. While that was going on Hopkins Island was washing away?

A. Hopkins Island was not washing away as fast as 98 was.

Q. But it was washing?

A. Yes, sir; it had a steep bank there.

Q. Which side of Hopkins did it wash from?

A. The southwest.

Q. On the southwest side?

A. Yes, sir.

Q. And there was enough of the current coming over on the west side of Hopkins to wash it?

A. On the west side; yes, sir. There was enough current in there to wash it on that side.

Q. Did steamboats travel that channel in times of ordinary high water?

A. They traveled both of them in ordinary water; yes, sir.

Q. In low water did they travel it?

A. Now, I don't know, in extremely low water, I don't [fol. 451] know whether they could get through or not.

Q. But in ordinary stage they could?

A. Yes, sir.

Q. You say you have been on that Island 98 hundreds of times?

A. Yes, sir; over a hundred times.

Q. When did you see that territory last?

A. I saw it in the early nineties.

Q. You have not seen it since early in '90?

A. Do you mean the main bank?

Q. I am not talking about the island. I am talking about the territory in there.

A. Oh yes; I took charge of my brother's store and a small plantation in 1907 and stayed there until 1910.

Q. Where?

A. On the upper portion of Belleview.

Q. Since that time have you see- this territory?

A. I have seen it but not lived there.

Q. Well, have you been out on the island or tow head or whatever you are a mind to call it?

A. No, sir; no, sir.

Q. Since then?

A. No, sir.

Q. Do you know that there is land there now there about [fol. 452] where Island 98 was when you first knew it?

A. No, sir.

Q. You have not seen that land?

A. No, sir; I have not been there since 1903.

Q. You don't know where the river runs now?

A. I was there—I took charge of my brother's store in 1907. I went to Florida in 1903, and came back in 1907 and took charge of my brother's store and run it for four years, and managed his little plantation. That would leave me there until 1910. From 1910 on I have not been in that country at all.

Q. Let me travel back and ask you a question that escaped me. At the point on the sand bar or tow head where you picked your brother up, where you landed and picked your brother up, what distance and in what direction was that sand bar from Hopkins Island?

A. Well, now, I can't give you the exact distance. But to strike the Louisiana it was to the north of me, but I don't know the distance.

Q. What was north of you?

A. Hopkins Island.

Q. Hopkins Island was north?

A. Yes, sir; of where I struck the sand bar.

Q. Can you estimate the distance?

[fol. 453] A. No, sir; I can not.

Q. You don't know whether it is a quarter of a mile or a mile?

A. No, sir; I can't give you any idea. I don't know. I just don't know.

Q. But the sand bar was about opposite, as I understand you, from Belleview Plantation?

A. Yes, sir; yes, sir.

Q. And that was in the northeast corner of Section 33?

A. I don't know the section.

Q. The section that I pointed out to you on the map?

A. Yes, sir; the one you pointed out to me.

Q. And that sand bar that you have been talking about is the one that you say grew from year to year?

A. Yes, sir.

Q. As the island washed away?

A. Yes, sir.

Q. And it grew from that point down to opposite Belleview?

A. No, sir. I will not say from that point. I would say that it grew, as it turned out, from Willow Point or the Newman's Point, it made out in a great wide sweep, all the way. Now, in down from Henderson, on the Louisiana side, [fol. 454] it made a sweep around this way. It did not come out from the point at all.

Q. Did it go north and east from under the end of Willow Point?

A. You might say northeast.

Q. Northeast and east?

A. Yes, sir.

Q. Did you ever see Montgomery's map of East Carroll Parish, Louisiana?

A. No, sir.

Q. You don't know anything about that map?

A. No, sir.

Q. In 1903 and 1904, was this sand bar that you have been talking about, or tow head, whatever you want to call it, connected with the Louisiana side?

A. I was at Meyersville, Mississippi. I don't know. I left our home in 1897, and was at Meyersville, Mississippi, until 1903, and then I went to Florida. Those years I don't know anything about it at all, and did not know anything about it from 1910 on.

Q. Now, you say that you knew nothing about Magna Vista plantation?

A. No, sir; I did not say that.

Q. Do you know where it is?

[fol. 455] A. Yes, sir.

Q. Where it is?

A. On the road. We used to go up the river bank up there, up to Meyersville, up in the county, facing the river.

Q. Well, where is it with reference to Albemarle?

A. North of it.

Q. How far?

A. Several miles, but I don't know how many.

Q. You don't know how many?

A. No, sir.

Q. And you say you never knew of Mr. Foster owning that place?

A. Not Mr. R. E. Foster; no, sir. Not Mr. R. E. Foster.

Q. Did you ever know of any Foster?

A. Yes, sir.

Q. What Foster?

A. I don't know his name.

Q. Was he any relation to R. E. Foster?

A. I think not. I can't say.

Q. When was it that Mr. Foster owned it?

A. Before I moved up on Auraton plantation prior to 1880.

Q. Do you know whether Mr. R. E. Foster ever owned it?

A. I don't know.

[fol. 456] Q. You know Mr. R. E. Foster, do you?

A. Slightly; yes, sir.

Q. You have known him for a good many years?

A. Yes, sir.

Q. He is a member of the legislature from that county, is he not?

A. Yes, sir.

Objected to.

Q. He is regarded as an honorable gentleman, is he not, Mr. Purnell?

A. One of the finest men that I ever knew in my life.

Q. *Id* he said that he owned a plantation you would not doubt it, would you?

A. I would take Mr. Foster's word for it.

Q. I see. So then, as I understand you, you are without knowledge about the ownership of it?

A. Yes, sir; in regard to Mr. Foster. I don't know whether he ever owned it or not.

Q. I see, and you don't know either, of course, anything about how often he may have been on Magna Vista plantation, do you?

A. No, sir; not myself.

Q. Not the slightest?

A. [illegible] sir; not the slightest.

[fol. 457] Q. You were down, until 1880, below Chotard?

A. Right adjoining the Chotard plantation.—the upper part. There were two pieces of it, as I told you. The upper and the lower one, and I was right adjoining the upper.

Q. I see.

A. Yes, sir; I was right adjoining the upper.

Q. Do you know where the line between Issaquena and Warren counties is?

A. About.

Q. It is right there at Belleview, is it not?

A. Yes, sir.

Q. Which county is Belleview in?

A. Issaquena.

Q. And just south of it is the Warren county line?

A. Yes, sir.

Q. Now, you say that you saw the last of Island 98 either in '93 or '94, or '5?

A. Yes, sir.

Q. What was the size of that island before that overflow?

A. I don't know.

Q. Can you give us some idea?

A. No; I can't. It was probably a half a mile long and a hundred or 200 yards wide.

[fol. 458] Q. Is that the best estimate you can make?

A. Yes, sir.

Q. Did it disappear suddenly?

A. During the high water; yes, sir. It covered it over, the high water did, and I saw the trees fall, and the last trees on there fell while the water had the land covered. I saw them fall.

Q. Well, were you there the next year?

A. Yes, sir.

Q. Was the river flowing over the place where the island had been?

A. Yes, sir.

Q. Up to the time that you left there had there been any sort of land reappeared where you saw the Island 98 disappear?

A. None whatever.

Q. None whatever?

A. No; none whatever.

Q. Now, about this chute you saw you swam as a boy between Island 98 and the shore?

A. Yes, sir.

Q. Did the boats go up that chute?

A. If they had freight. They did not go up regularly, as a regular thing. But if they had freight enough, and to [fol. 459] keep from hauling a heavy load from Chotard Landing, we got the captain to come up as far as our front and put it off there.

Q. That was at the Purnell plantation?

A. Yes, sir.

Q. All right. After the boat would come up there to your place would it go on through?

A. Sometimes it did.

Q. On north around the island?

A. Yes, sir.

Q. And back into the main channel?

A. Yes, sir.

Q. Now, that was done by the packet boats?

A. That was done by the Vicksburg and Greenville packet. The large boats would not come in there at all.

Q. The big boats never did run through the chute?

A. No, sir; they never did.

Q. Not in the highest water?

A. No, sir.

Q. What boats do you remember going through there?

A. We had the Belle of the Bend and the Issaquena going through there.

Q. They were both side-wheelers, were they?

A. Yes, sir.

[fol. 460] Q. They were both big boats?

A. No, sir.

Q. You don't call them big boats?

A. No, sir.

Q. What would constitute a big boat, in your estimation, Mr. Purnell?

Q. We generally called the Anchor Line steamboats our big boats. I regard them as big boats.

Q. The others are smaller boats?

A. Yes, sir.

Q. Do you know about the mail boats going through there?

A. They were the mail boats.

Q. What, the Anchor Line?

Q. No, sir; the Issaquena.

Q. The mail boat did go through there?

A. Yes, sir; at times.

Q. At times?

A. Yes, sir; at times they would go through there, but they did not make a regular thing of it.

Q. Do you know anything about them going through there in '92?

A. Well, I don't know. I don't know that they went through there in '92.

[fol. 461] Q. Do you know that they did not go through there in '92?

A. No; I don't know it.

Q. You don't know about that?

A. No.

Q. How long did they continue to go through there, Mr. Purnell?

A. They would only come as we requested them, and they came in from then until the island was swept away. If I had freight for them to come up there they would come, and if they did not have any they would not come, but would go on the outside of the island then.

Q. So far as you know, as long as the island was there, when requested, they would come through the chute?

A. Yes, sir; they would come up there then for me.

Q. Suppose that they had freight for Higgins, or somebody above you, would they come in for them just the same as if for you?

A. I don't know about that. The Higgins place had a landing on Albemarl front, right out in front of them, and they received their freight there.

Q. You mean that nobody had a landing on the chute except you?

A. Nobody that run back that I know anything about.

[fol. 462] Q. You knew Maj. Higgins, did you?

A. Yes, sir; very well.

Q. Do you remember the day that he killed himself?

A. Yes, sir.

Q. When was that?

A. I don't remember the date.

Q. Well, approximate it if you can. You need not confine yourself to the exact day?

A. I would not try to approximate it, for I don't remember. I know that he did it, though.

Q. Well, was it after you were a grown man, or while you were yet in your teens? Yet a boy?

A. It was while I was a boy in my teens.

Q. Then, it was prior to 1886?

A. No—'86,—yes, sir. It was prior—it was in the eighties, but I can't tell what year.

Q. "In the eighties," is as close as you can get to it?

A. Yes, sir.

Q. Now, when he killed himself his place, or large part of it, had caved into the river?

A. No, sir.

Q. Hadn't it?

A. No, sir; his house, the home place, was setting in that [fol. 463] same place for the last 75 years. It had not been moved a particle.

Q. Let me see if I understand you. Had any of his plantation caved in the river at the time that he killed himself?

A. I don't think that it had gotten to his place at all.

Q. The Island 98 was still in existence when he killed himself?

A. Yes, sir.

Q. Was Hopkins' Island in existence then?
A. Yes, sir.
Q. That is all.

Redirect examination.

By Mr. Dale:

Q. Do you know—are you familiar with maps and surveys?
A. No, sir.
Q. Do you know anything about the sections, townships and ranges of those places that you have been testifying about?
A. No, sir.
Q. You were asked about 1882. You were shown a map [fol. 464] of Island 98 in 1882 and asked in regard to the map. Do you recollect whether or not prior to 1882 the island, when you first knew it, had begun caving?
A. Yes, sir.
Q. Well, do you know whether a considerable part of it had caved away up to that time?
A. It sure had.
Q. It had?
A. Yes, sir; both on the sides and on the length of it, too.
Q. Did the island, in 1882, extend down as far as when you first knew it?
A. No, sir.
Q. The lower end was cut off considerable?
A. Yes; indeed. Way up.
Q. Do you know whether the island extended down as far as Belleview?
A. Yes, sir; way down in front of Belleview.
Q. It did at first, but in '82 do you recollect whether or not it had caved off in front of Belleview?
A. Not in 1882. I will not say that it was or was not—that it was or was not.
Q. You don't recollect whether or not?
[fol. 465] A. No, sir.

By Mr. Brandon:

Q. On cross-examination, Mr. Purnell, you mentioned a place called "Oraton." What was Oraton place?

A. That was my father's plantation.

Q. How did it get its name?

A. That was the name of my step-mother. When my father married her her name was Ora, and he put the "ton" to it and called it Oraton.

Q. Now, referring to the map, Sheet 17, Exhibit C to the bill of complaint, on your direct examination, you pointed out the words, W. Parnell, and which you say should be spelled Purnell. State whether or not that is the location of Oraton place?

A. Yes, sir.

Q. It is?

A. Yes, sir.

Q. Just north of Ingomar or Gabe Brown's place?

A. Ingomar was not Gabe Brown's place,—Chotard and Gabe Brown's place were there just adjoining. The line divides the two, the Oraton place and the Chotard place.

Q. You stated on cross-examination that you lived on the Kiger or Belleview place from your infancy in 1867 until 1880?

[fol. 466] A. Yes, sir.

Q. Where did you go in 1880?

A. We moved to an old plantation that was deeded to us by the Peeples Estate,—by the Peeples to my father.

Q. And what was the location of Island 98 with reference to the Oraton plantation where your father moved to?

A. Directly in front, on the west.

Q. Now, from 1880, state whether or not you have personal knowledge and recollection of the changes that took place in Island 98?

A. Yes, sir; from then on.

Q. You have been asked on cross-examination by counsel about an island called Hopkins' Island. Did you have occasion to visit that island as frequent as you did Island 98?

A. No, sir; I was only on it a few times.

Q. That is all.

(Witness excused.)

[fol. 467] JOSEPH V. DE LAHUNT, called as a witness on behalf of the complainant, was sworn and testified as follows:

Direct examination.

By Mr. Brandon:

Q. State your name to the stenographer?
A. Joseph V. De Lahunt.
Q. What is your age?
A. Seventy.
Q. Where are you now living?
A. Memphis.
Q. What is your profession or occupation?
A. Pilot and captain.
Q. Pilot and captain on what waters?
A. From Cairo to New Orleans.
Q. On what river?
A. The Mississippi river.
Q. How long have you been living in Memphis?
A. I have been in Memphis now about fifteen or sixteen years—something like that.
Q. In what service are you?
A. Working for the Government in the Second District, pilot and captain of a boat.
Q. Headquarters United States Engineer's office there?
[fol. 468] A. Yes, sir.
Q. Prior to moving to Memphis where did you live, Captain?
A. Vicksburg. That is where I lived before I moved to Memphis.
Q. What age were you when you went to Vicksburg to live?
A. Well, I was just fifteen years younger than I am now.
Q. When you went to Vicksburg to live, not when you left. Did you go to Vicksburg as a child, or after you were grown?
A. I came to Vicksburg when I was about twelve years old.
Q. And did you live there in Vicksburg until you moved to Memphis?
A. Yes, sir.

Q. About what age were you when you became a licensed master and pilot on a boat on the Mississippi river?

A. I got a license in '8—I think it was either '79 or '80.

Q. Either 1879 or 1880?

A. Yes, sir.

Q. What boat were you first employed upon?

[fol. 469] A. The first boat that I was ever on as a pilot was the Josephine Spengler.

Q. In what capacity was the Spengler?

A. She towed rafts for the Spengler mill.

Q. Between what points?

A. She went up to Miller's Bend above Greenville.

Q. Between Vicksburg and Miller's Bend above Greenville?

A. Yes, sir.

Q. In what capacity were you on the Spengler?

A. Pilot.

Q. As pilot?

A. Yes, sir.

Q. And how long were you a pilot on the Spengler?

A. I was on her one season—just about one season.

Q. What year was that?

A. It was about '79— 1879 or 1880—near '79. Just after the yellow fever.

Q. Just after the yellow fever in 1878?

A. Yes, sir.

Q. All right, then after the Spengler, what boat were you on?

A. I was on the Kate Dixon from Vicksburg to Green-

[fol. 470] ville, the Vicksburg and Greenville Packet Company.

Q. For what length of time were you pilot on the Dixon, Captain?

A. I was on her about two years, I think. Something like that. She sunk at Myersville in 1882.

Q. The Dixon, you say, was sunk at Myersville in 1882?

A. Yes, sir.

Q. After the sinking of the Kate Dixon what boat were you on?

A. On the Issaquena.

Q. On what trade was the Issaquena engaged?

A. Vicksburg and Greenville, two trips a week, that is four times a week, twice up and twice down.

Q. How many years were you on the Issaquena?

A. Five years.

Q. That carried you on the Issaquena until about 1887 then?

Objected to as leading.

A. I was on her for five years.

Q. For five years?

A. Yes, sir.

Q. After the Issaquena what boat were you on?

A. The Issaquena, well, I then got a boat called the Phil [fol. 471] Armour.

Q. In what trade was the Armour? In the trade between Vicksburg and Greenville?

A. Yes, sir.

Q. How long were you pilot on the Armour?

A. Not very long, for they got the Morning Star, and I was then on the Morning Star for about two years, running three trips a week to Greenville, in day light.

Q. How long were you on the Morning Star?

A. About two years.

Q. And you made three trips a week?

A. Yes, sir; day light trips, Vicksburg to Greenville.

Q. And after the Morning Star then?

A. After the Morning Star it was the Ruth. They got the Ruth and the Chattahootchie. They got the Ruth from the Lee Line, and then also had the Chattahootchie.

Q. How many years were you on the Ruth and the Chattahootchie?

A. I was on the Ruth about a year, I reckon.

Q. And how long were you on the Chattahootchie?

A. It was just from one boat to the other.

Q. You alternated between the boats?

A. Yes, sir.

[fol. 472] Q. Now, after those two boats, the Ruth and Chattahootchie?

A. Well, the Cattahootchie she burned and then they got the Annie Lauria.

Q. Where did the Annie Lauria Run, between Vicksburg and Greenville?

A. Yes, sir; three times a week. I was pilot on her for a while and then Captain.

Q. You were both pilot and Captain on the Annie Laurie?

A. No; pilot a while and then finally got to be captain.

Q. How long were you on the Annie Laurie?

A. I don't think that I was on her but three or four years,—something like that.

Q. After the Annie Laurie then what?

A. The Belle of the Bend.

Q. Where did the Belle of the Bend run?

A. Vicksburg to Greenville.

Q. How long were you on the Belle of the Bend?

A. I was on her from '98 up to the time that she laid up.

Q. Up until she laid up?

A. Yes, sir.

[fol. 473] Q. Now, as I understand your testimony, all of the boats that you were master and pilot upon were in the trade between Vicksburg and Greenville?

A. Yes, sir.

Q. And——

A. (Interrupting.) Here you are, right here. Here is a memorandum of when the Belle laid up.

Q. You have offered me a memorandum. The Belle of the Bend was laid up you say when?

A. She laid up in 1908.

Q. I refer you here to Sheet 17 of the Mississippi River Commission Maps, which have been offered in evidence as Exhibit C to the Bill of Complaint in this case, and I point to you the section of the river indicated on that map between a point indicated as Brunswick Landing on the south and Tennessee Landing on the north, and state whether or not the various boats which you have testified you worked upon as master or pilot had occasion to run up and down that stretch of the river, or whether they did run up and down that stretch of the river?

A. They ran up and down the river. You see the channel was right up and down the Mississippi shore at that time, and that was a long time ago since the river was up [fol. 474] there to the Tennessee, and there was a boat sunk up there called the Tom Foster.

Q. I point to you on that map an island indicated as Island No. 98. Please state whether or not the boats on which you acted as master or pilot during the whole of this time passed up and down by Island No. 98?

A. Yes, sir; passed to the west side of 98.

Q. In the discharge of your duty as a pilot state whether or not, as the case may be, it was your duty to observe and note changes in the islands, bars and the channels of the river?

A. Always. Always take note. I had a whole drawer full of books but I burned them all up, and I have not got but one left, and that is the last one I made. My wife said to burn them up, that I would not need them any more, and get rid of them.

Q. You did keep a memorandum?

A. No, I didn't keep no memorandum. I have it all in my head.

Q. You formerly kept it, you say, however?

A. Yes, sir.

Q. What became of Island 98?

A. It disappeared absolutely.

Q. Was any of it at all left?

[fol. 475] A. No, sir; not a bit.

Q. What was the occasion for it to disappear?

A. The caving banks. It started to cave at the head and just kept on chipping away and caved all away. In 1897 I run right over the top of the island with a loaded steamboat.

Q. Over the top of what?

A. Over the top of the place where 97 was.

Q. You mean 97 or 98?

A. Of 98—where 98 was.

Q. Was there any trees to indicate where that island was at that time?

A. No, sir; not at that time there was not.

Q. What became of them?

A. They just went to China, I reckon. That place was always a very close place in there, and when we ran down there with a raft or a barge or anything we had to flank that place because it was very narrow between Hopkins' tow head and Island 98.

Q. What do you mean by flanking?

A. We had to use that precaution then. That was while the island was there. But after the Island gave away we had no trouble. You go right on down the bend.

Q. Explain what a boat does in flanking?

A. Backs up—backs up in such a way that the current [fol. 476] goes up against her side and she goes flanking on down with her stern in the current, just by shoving her into the bend. That is for safety, flanking it.

Q. When Island 98, which you say disappeared, was in existence, where did the channel of the river run with reference to the island and Hopkins' Tow head you refer to?

A. Where the island was?

Q. Where the channel was?

A. It run to the west of the island when it was there.

Q. Which island?

A. Island 98.

Q. West of Island 98?

A. Yes, sir.

Q. With reference to Hopkins Island, or Hopkins towhead, did the channel run east or west of that?

A. Run east of it.

Q. East of that?

A. Yes, sir.

Q. The channel, as I understand your statement, run east of the Hopkins' Towhead and to the west of Island No. 98, is that right?

A. Yes, sir.

Q. And between the two?

A. Yes, sir.

Q. Was the disappearance of Island No. 98 gradual, slow, [fol. 477] or rapid?

A. It went away slow. Just kept on chipping off, chipping off.

Q. On which side of Island 98 did the caving take place, Captain?

A. On the outside—the west side.

Q. The west side?

A. Yes, sir.

Q. The west side of Island 98, as you say, chipped away,—as it chipped away, what changes, if any, took place on the Louisiana side of the stream?

A. Well, it filled up over there.

Q. State whether or not *furing* the process of the caving of Island 98 was it easy or difficult to land your boat there?

A. You could not land at all. I never did land at Island 98 in my life.

Q. Why could you not?

A. Because of the snags and the trees and things there. It was dangerous to land there.

Q. A boat could not land there?

A. No, sir. A boat could not land there without taking big chances on sinking.

Q. What do you mean by these snags and trees?

[fol. 478] A. Big timber in Island 98.

Q. Big timber on the island?

A. Yes, sir.

Q. How would they get into the river?

A. They caved in.

Q. And in '97 or '98 I understand you to say that the island entirely disappeared?

A. Yes, sir.

Q. And there was not a vest*a*ge of the island left, as I understand you, Captain?

A. Nothing left of it. If there was I ought to have seen it. I was running up and down there six times a week.

Q. Prior to the disappearance of Island 98 you state that the main channel of the Mississippi river was to the west of that island?

A. Yes, sir.

Q. What was between that island and the Mississippi shore on the east?

A. What was between there?

Q. Yes, sir; what was between there. What kind of a channel was there between Island 98 and the Mississippi shore?

[fol. 479] A. There was no channel there at that time.

Q. Any water at all?

A. Where—in between the island?

Q. And the Mississippi shore?

A. There was not no channel there until the island gave away.

Q. Was there a chute there?

A. There was a little chute up in there; yes, sir.

Q. What was the width of that chute?

A. Oh now, it was not very wide.

Q. Was it navigable for large boats?

A. No, sir.

Q. Could small boats go up there at any stage of the water?

A. Not far. It was all closed up at the head of it. You could land at the foot of it. You could land down at the foot of it. That is where the landing was, right at the foot of it,—Chotard Landing, they called it, at the foot of Island 98. Island 98 never was a very large island.

Q. In high water could boats go up that chute then, Captain?

By Mr. Henry: We object to that because he has gone over it once and it is just a repetition.

[fol. 480] A. Could go over the bank in high water. They could go over the bank or any where in high water.

Q. Did you ever go up between the island in any boat you ever operated on, and the Mississippi shore? Did you ever take your boat between the Island and the Mississippi shore, Captain?

A. Not that I ever knew of. I landed at a little place called Esalena. The foot of the island over there,—the foot of the island kept caving off where Purnell had a little place there. That all caved off.

Q. That is all.

Cross-examination.

By Mr. Butler:

Q. When did they first begin to use lights as pilots on the Mississippi river?

A. It was a long time ago, when I first came on the river.

Q. They had lights then?

A. They had a few. They did not have many, and we used a torch basket.

Q. What is a torch basket?

A. They never had electric lights. Had a torch basket.

[fol. 481] Q. I mean at the present time. You have lights, government lights?

A. Yes, sir.

Q. And you navigate largely by reference to those lights?

A. Not altogether.

Q. Not altogether, but largely?

A. Well, yes, sir; we go by them. Half the time those lights are out. There are other marks we go by. We don't depend on the lights because, as I said, half the time the lights are out.

Q. When did they first begin using the lights in that respect?

A. It has been so long now that I can hardly tell you.

Q. When you first went on the river?

A. Yes, sir; about the time that I first went on the river they began to put them out.

Q. Now, in addition to the lights was there not a book published, a pilot book?

A. A light house book?

Q. No; not a light house book. A pilot book. A book like this that I have here in my pocket, which gives you the lay of the river and the lay of the island, and so forth and [fol. 482] so on? Can you see without your glasses?

A. No; I never used that book at all.

Q. It was not published then?

A. Frank Caton, a pilot, made a book.

Q. Who was that—who was he?

A. He was a pilot on the Natchez. I never have seen it. He made one though.

Q. When was that printed?

A. I don't know. I could not tell you. It was so far back that it is hard to remember.

Q. Did you ever know about the Samuel Cummings' pilot book?

A. No, sir; I never learned mine from the books. I got mine out on the river and learned it from hard knocks.

Q. You mean that you looked to the river yourself for your own information?

A. Yes, sir; I kept a log of the river, a little log. I always kept a log of the river, just like this one which I have in my pocket. This is the last one I have, and it don't amount to anything much—it is for the last time that I was down there.

Q. You have not got a log of the river now that you made when you began acting as a pilot in 1880?

[fol. 483] A. No, sir; I burned them all up, as I told you.

Q. Do you know of anybody that has got a log of the river of this particular section?

A. No, sir; I do not. I don't know whether my nephew, Audrey Haynes, has got one or not.

Q. Where does your nephew, Audrey Haynes live?

A. He works for the government.

Q. Is he on the same section of the river?

A. I learned him the river. He is my nephew.

Q. I say, is he on the same section?

A. Yes, sir.

Q. Where is Mr. Haynes now?

A. Up the river.

Q. What is his post office address? I want to locate him, Captain?

A. He lives in Vicksburg.

Q. Do you know of anybody else that kept a log of the river?

A. No, sir; I always kept one myself. I don't know whether anybody else kept one. I know that some of the pilots did not. Most of them kept it in their heads,—most do, but I always kept a little memorandum when I worked down here, and I have always kept a little memorandum since I have been on the work up there.

By Mr. Henry:

[fol. 484] Q. When did you go to work for the government?

A. I think it was in 1912.

Recess until 2 o'clock P. M.

At two o'clock P. M. met pursuant to the above noted adjournment. All present as of this morning, and the cross-examination of Capt. Jos. V. De Lahunt was resumed by Mr. Butler.

By Mr. Butler:

Q. Capt. De Lahunt, where was the land which you knew as Hopkins's Island situated with reference to Island 98? In what direction?

A. West of 98.

Q. Immediately west or northwest?

A. West.

Q. How large an island was Island 98 when you first knew it, Captain?

A. It was not very large. Just nothing but a narrow strip.

Q. How long north and south?

A. A mile and a half long, something like that.

Q. At the time that you first knew Island No. 98 was there or not a chute that ran to the east of Island 98 opening both at the north end of the island and at the south end of the [fol. 485] island?

A. No, sir. There was a chute running to the left of Island No. 98, but it had to be extremely high water before you could go through there.

Q. That is the left, coming south?

A. Yes, sir; but that was not the river. It was just down to the left of that island there, just a little place running through there. There was not water enough to go through there only on a very high stage of the water.

Q. I believe you said that you did not, or that you never went to the east of Island 98 in your trips there?

A. I don't remember going to the east of it only when it was washed away.

Q. I mean while the island was in existence?

A. No, sir; I did not go to the east of it.

Q. What became of the land you knew as Hopkins' Island?

A. What became of it?

Q. Yes, sir; what became of Hopkins' Island?

A. Why, it was there when I left here,—the best part of it.

Q. In 1908?

A. In 1908.

Q. And you say that was to the west of Island 98, Cap-
[fol. 486] tain?

A. To the west of Island 98: yes, sir. I sunk one boat at Hopkins, on the head of 98, the Kate Dixon.

Q. I show you, Captain, a map of the Mississippi river, made on June 23, 1874, the original of which has been offered in evidence here as an exhibit.

A. I don't know a thing in the world about maps—not a thing in the world.

Q. Can you tell the Court whether or not Hopkins Island, at the time you first knew it, was situated with reference to Island 98 as shown on that map, or approximately so?

A. I can't tell a thing about maps. I don't know a thing in the world about maps—not a thing in the world.

Q. Was there a channel west of Hopkins Island when you first knew it?

A. No; no channel west of Hopkins Island. No, sir; no channel.

Q. The channel run between Hopkins' Island and Island 98 when you first knew it?

A. Yes, sir.

Q. Now, I show you a Mississippi Commission chart made in 1883, from a survey made in 1882, and years prior thereto, [fol. 487] and will ask you if you remember, at any time, where the main channel of the river ran to the west of Hopkins Island as shown on the map?

A. It never run there in my time. It run to the east of Hopkins Island.

Q. Was there another island north or northwest of Island 98 where the river at one time run to the east of it and later, in 1882 and 1883 ran to the west of it?

A. Was there another Island?

Q. Yes, sir?

A. The only island I knew of was the Hopkins tow head and Island 98.

Q. Now, this map I have here shows an island, the southern point of which is about the center of Island 98, and extends way on up here to the E. Foster place, with the channel on both sides. Do you remember that island?

A. No, sir.

Q. You don't remember that island?

A. No, sir.

Q. As shown on this map?

A. No, sir.

Q. I now show you a map here that has been offered in evidence as Exhibit BB to the testimony in this case, which [fol. 488] purports to show Hopkins Island as originally surveyed by the State of Louisiana, and also purports over here to show Island 98. Now, is that the land you knew as Hopkins' Island?

A. I can't tell anything about maps. I don't know a thing in the world about them.

Q. It was immediately west, you say?

A. What?

Q. Immediately west of Island 98?

A. Hopkins' Towhead was west of Island 98; yes, sir. But I can't tell a thing about maps. I never learned it that way. I know the channel of the river, but I can not tell you anything about maps.

Q. That was the relative position of it, was it?

A. I don't know a thing about that. I don't know a thing about maps.

Q. As I understand from your testimony, Hopkins Island never washed away as long as you were there? Is that your testimony?

A. While I was there not altogether it did not wash away; no, sir.

Q. And you were there until 1908, as I recall your testimony?

[fol. 489] A. Yes, sir; 1908.

By Mr. Butler: I believe that is all, Judge.

By Mr. Dale: That is all. You may stand aside, Captain.

(Witness excused.)

The complainant rests.

Whereupon the defendant then and there offered the following additional testimony:

[fol. 490] OFFERS IN EVIDENCE

By Mr. Creekmore: The defendant here offers in evidence Montgomery's map of East Carroll Parish, Louisiana, copyrighted November 1st, 1904, by Thomas F. Montgomery, Lake Providence, Louisiana.

By Mr. Dale: To which offering the complainant objects for the reason that there is no evidence that this is a map authorized by law, either of the United States or the State of Louisiana, and it is not certified to at all.

For the further reason it does not purport to be a survey of the Mississippi river, and does not purport to show sand bars or accretions, nor changes in the shore lines.

For the further reason that said map is not correct and it does not show whether it is merely a copy from other old maps, or whether it is made from actual surveys, and the surveyor who made it, if it was made by a surveyor, has not been examined and has not shown that it is a correct map.

For the further reason that most of these parish maps are not made from actual surveys, and this one does not seem to be an exception to the rule.

[fol. 491] By Mr. Creekmore: I desire to ask counsel, outside of the objections he has just made, and which are in the record, will you have any objections to having a photostatic copy of this map introduced instead of the map?

By Mr. Dale: No, sir; there is no objection to that whatever. We will be glad if you will furnish us a copy also.

By Mr. Creekmore: Yes, sir; we will furnish you a copy.

We now offer pages 1, 2 and 3 of "The Western Pilot," containing a chart of the Ohio and Mississippi rivers, from the Mouth of the Missouri river to the Gulf of Mexico, accompanied with directions for navigating the same, and "A Gazetteer or Description of the Towns on their Banks, Tributary Streams, Etc. Also a Variety of Mater Interesting to Travelers, and All Concerned in the Navigation of those Rivers, with a Table of Distances from Town to Town on all of the above Rivers."

"By Samuel Cummings, Cincinnati, Published by George Conclin, 1836."

Also pages 102 ans 103.

[fol. 492] By Mr. Dale: That is also objected to by the complainant for the reason there is no evidence that Samuel Cummings was a pilot or an engineer, and there is no evidence from what source he got his data or information. And the map of the Mississippi river shown on page 101 does not purport to be made from a survey of the river, or does not purport to have been made by a surveyor. Or is it a certified copy of a recognized map, and so far as the evidence shows it is made merely from cursory observation, without any attempt at accuracy or measurement, or distances. That the same is totally incompetent as evidence to establish the ownership of real estate, or the lines between two states.

With the exceptions noted there is no objection to a photostatic copy of the pages offered being substituted for the original.

By Mr. Creekmore: We ask that the photostatic copy of Montgomery's Map of East Carroll Parish, Louisiana, which already been offered in evidence be marked Exhibit V-2 to the defendant's testimony.

And that the photostatic copy of pages 1, 2 and 3, of the Western Pilot, heretofore offered in evidence by the [fol. 493] defendant, be marked Exhibits V-3, V-4 and V-5 respectively, and that the "The Western Pilot" be offered as a historical document and Ancient map.

An adjournment is here taken until 9 o'clock A. M. January 20, 1927.

[fol. 494] WILLIAM MILLER, colored, called as a witness on behalf of the defendant, was sworn and testified as follows:

Direct examination.

By Mr. Sharp:

Q. State your name?

A. William Miller.

Q. What is your age, William?

A. I will be fifty-two years old this coming May. I was born in 1875.

Q. Where did you live during the early years of your life?

A. Eustacia.

Q. Eustacia plantation?

A. Yes, sir.

Q. When did you first live on Eustacia Plantation?

A. My mother told me that from about two years old up until I was ten.

Q. During the time while you lived on Eustacia plantation did you ever know what is known as Island 98 over there in the river?

A. Yes, sir.

Q. Do you know who owned Eustacia plantation?

[fol. 495] A. Major Higgins.

Q. Where did that island lie with reference to Eustacia plantation or Maj. Higgin's plantation?

A. Right in front.

Q. You lived on Eustacia plantation until you were ten years old?

A. Yes, sir.

Q. How big an island was that at that time, if you remember, William?

A. Maybe about 250 acres, or something like that.

Q. Where did you go from Eustacia plantation?

A. Brunswick.

Q. Where is Brunswick?

A. Brunswick is in Warren county, about eight miles from there.

Q. Did you see the island frequently, or not, after you lived there?

A. Yes, sir.

Q. How long did you live down at Brunswick?

A. Ten years.

Q. Where did you go from Brunswick?

A. To Vicksburg.

Q. How long did you stay at Vicksburg?

A. I stayed at Vicksburg from '97 up until '16.

[fol. 496] Q. What were you doing during all of that time?

A. Steamboating every day. I have done that all my life around Vicksburg. From Vicksburg to Greenville.

Q. You steamboated from '97 until 1916 from Vicksburg to Greenville?

A. Yes, sir.

Q. What boats did you run on?

A. The Annie Laura, the Ruth, Chattahootchie, Belle of the Bend, Fall City, Ben Hur, Cardee and the Web Oliver.

Q. On your trips on these boats how often did you pass this Island 98?

A. Let me see. I passed it six times a week. We made three trips a week from Vicksburg. Yes, sir; six times a week. Three times up and three times back.

Q. Three up and three back?

A. Yes, sir.

Q. From 1885 or 1886, on up until 1916, you saw the island frequently?

A. Yes, sir.

Q. State whether or not that island is now where it always was—that part of the island that is there now?

By Mr. Brandon: I object to that as leading and suggestive of the answer desired.

[fol. 497] A. Yes, sir.

By Mr. Sharp:

Q. State whether or not Island 98 ever entirely washed away, or disappeared?

A. No, sir; it did not entirely wash away. The lower end all washed up. The upper end did not wash off.

Q. How much of the upper end did not wash off?

A. It seems to me like it was seventy-five or eighty acres.

Q. Did you see that island about 1916?

A. Yes, sir; I saw it this Sunday. I saw it Monday.

By the Commissioner:

Q. This last Monday?

A. Yes, sir; I pass it once or twice a week.

By Mr. Sharp:

Q. About what size is it now?

A. Well, maybe about three or four hundred acres. Maybe more than that now.

Q. You say that a part of it washed away and left about seventy-five or eighty acres on the north end?

A. Yes, sir.

Q. After the washing stopped did it go to building back on that island?

A. Yes, sir; it built back in some places.

[fol. 498] Q. It built back in some places?

A. Yes, sir.

Q. When you first knew that island on which side of the island was the main channel of the river on?

A. On the east side.

Q. The east side?

A. Yes, sir.

Q. Over next to the Mississippi shore?

A. Yes, sir.

Q. Did it ever change over on the west side?

A. Yes, sir.

Q. When did it change over there, if you remember about that?

A. To my memory it changed around there about 1912 or 1911.

Q. Did it ever run on the west side before that time that you know of?

A. Yes, sir.

Q. When?

A. In 1886 it was on the west side. You see that was nothing but a dry chute in there. We used to haul wood.

Q. From the island?

A. Yes, sir.

[fol. 499] Q. Did it ever get so boats could go on the east side before the river changed over on that side?

A. No, sir.

Q. What about high water time?

A. When it was high water,—high water in it the boats passed through it.

Q. Passed through the chute?

A. Yes, sir.

Q. Do you remember what year it was that it changed from the west side to the east side?

A. No, sir. From the west to the east?

Q. Yes?

A. No, sir; I can't remember that.

Q. You don't know what year that was?

A. No, sir.

Q. But it did finally change, I believe you say, from the west side over to the east side?

A. Yes, sir.

Q. And washed away Eustacia plantation?

A. Yes, sir.

Q. In 1910 or 1912, and finally changed back on the west side. Was that a quick change or a gradual change?

A. Kind of gradual. It was all done in high water.

Q. During high water it broke back through?

A. Yes, sir.

[fol. 500] Q. Did you ever know of anybody living on this island over there?

A. Yes, sir.

Q. Who was it that lived on there?

A. I know a man, Alex Mason. He lived at Vicksburg, and James Scruggs was the last man that lived there, to my memory.

Q. Do you know what year he lived there?

A. Yes, sir.

Q. When did he live there?

A. He was living there when we left there, and we left there in '86. What year he left there I don't know.

Q. Was any part of that island ever in cultivation that you know of?

A. Yes, sir.

Q. Do you remember when Major Higgins committed suicide over there?

A. Yes, sir; I lived on his place. I went over there to his house and looked at him.

Q. Where was the channel of the river at that time?

A. West.

Q. This part of the island left standing, was there any trees growing on that or not?

A. Yes, sir.

Q. What kind?

[fol. 501] A. Cottonwood and willow.

Q. That is all.

Cross-examination.

By Mr. Dale:

Q. What is your name?

A. William Miller.

Q. You are a colored man, are you?

A. Yes, sir.

Q. When did you say you were born?

A. In 1875.

Q. And you are now 51 years old?

A. I am fifty-one already.

Q. Now, where were you born?

A. Issaquena county.

Q. On what plantation?

A. Old Home Plantation.

Q. How far is that from the Higgins place?
A. About a mile and a half or maybe a mile and a quarter.
Q. On the river or back from the river?
A. Right on the river.
Q. About or below the Higgins place?
A. Below it.
Q. Above and below the Higgins place?
[fol. 502] A. Yes, sir.
Q. Who owned it?
A. Mr. Harmes, is all I know.
Q. You don't know of any other name for it than just the Old Home Place?
A. Yes, sir; they called it Chotard.
Q. Chotard?
A. Yes, sir.
Q. When did you move from Chotard to the Maj. Higgins place?
A. I can't remember. I was too small.
Q. You don't know when you moved from there?
A. No, sir; not from Chotard to Maj. Higgins. I was too small.
Q. Now, you can't recollect when you first went to the Maj. Higgins place?
A. No, sir.
Q. The first recollection you have you were living on Esutacia, which was the Higgins place?
A. Yes, sir.
Q. Did you know it by the name of Eustacia?
A. Yes, sir.
Q. About how old were you when you can first recollect?
A. Between seven and eight. Along '82 and '84. I re-
[fol. 503] member that year.
Q. In '82 and '84?
A. Yes, sir; and '83, I remember that.
Q. In 1882, 1883 and 1884. Can you recollect along there?
A. Yes, sir.
Q. When do you first recollect Island No. 98?
A. Somewhere along in '82.
Q. In 1882?
A. Yes, sir.
Q. When you first recollect Island No. 98 do you know what kind of timber was on it?

A. To my knowing there was nothing but cottonwood and willow.

Q. Did you ever go on it in 1882?

A. Yes, sir.

Q. When you were seven years old?

A. Yes, sir.

Q. Did you go by yourself or with somebody else when you went on it?

A. No, sir, us—just a gang of us children. Some days I would go by myself over to Scruggs' to get milk.

Q. How did you go?

A. Walked.

[fol. 504] Q. Could you walk from the main land across on to that?

A. I could walk over there.

Q. That was in low water?

A. Yes, sir; when the water was low there was no water in it.

Q. When the water got up high it got in the chute between the island and the bank, did it?

A. Yes, sir.

Q. What size was that island then?

A. It seemed like to me about like 250 acres, maybe. About like that.

Q. As far back as you can recollect somebody worked it—cultivated it?

A. To my best memory old man Scruggs was on it.

Q. Now, when was he there?

A. We left there in '86. We moved in '76 and left him on the Island.

Q. You moved away from there in '86?

A. Yes, sir.

Q. And left him on the island?

A. Yes, sir.

Q. You said something about Alex Mason. He lived there too?

[fol. 505] A. Yes, sir; but I don't remember him. My mother says that he lived there.

Q. You yourself can't recollect Alex Mason?

A. No, sir.

Q. And personally, you don't know that Alex Mason ever lived there?

A. No, sir; but I know Joseph Scruggs was living there because I went to his house.

Q. But you don't know personally anything about Alex Mason?

A. No, sir.

Q. In 1882 where did the steamboats run,—between the island and the bank or on the west side of that island towards the Louisiana shore?

A. The west side. They only came in the chute during times of high water.

Q. Dating your recollection from—from the time you can recollect up until 1882, that is, from the time that you can first recollect prior to 1882, as far as you know, had any steamboat run in through between the island and the bank?

A. Only in high water.

Q. They could not do that only in high water?

[fol. 506] A. No, sir; in low water a skiff could not get up in there.

Q. Now, were you still on Maj. Higgins place in 1882?

A. Yes, sir; was up there until '86.

Q. When did you leave Maj. Higgins' Place?

A. In '86.

Q. In '86 or '85?

A. In '86.

Q. You left there in '86?

A. Yes, sir.

Q. In 1886 you were ten years old, were you not?

A. Yes, sir.

Q. Or eleven?

A. Going on 11.

Q. You were ten going on 11?

A. Yes, sir.

Q. At the time you left the Maj. Higgins place?

A. Yes, sir.

Q. In 1886 when you left the Maj. Higgins place where did you go?

A. To Bruswick on Mr. Hamp Davis' place.

Q. Where is Brunswick located with reference to Maj. [fol. 507] Higgins place?

A. Brunswick is called about eight miles from Chotard, below.

Q. Eight miles down the river from Chotard?

A. Yes, sir.

Q. Is that in Warren county?

A. Yes, sir; in Warren county.

Q. How long did you live down there at Brunswick in Warren county?

A. Ten years.

Q. Then you lived there until 1896?

A. Yes, sir.

Q. During that time did you have occasion to go up to Maj. Higgins' plantation?

A. Every week. All my people stayed up there, and I was going backward and forward all during the week. Sunday was our big day there.

Q. Between 1882, the time that you can first recollect the island and 1896 when you used to go up to Maj. Higgins' place, did the island cave any?

A. It was not caving much th-n.

Q. It had not caved much up until 1896?

A. In '96?

Q. Yes?

[fol. 508] A. The biggest part of it was in '97.

Q. I did not ask about '97. Prior to 1896?

A. Yes, sir.

Q. Had the island caved or not?

A. It had caved some.

Q. Where did it cave?

A. The lower end.

Q. The inside, next to the chute, or on the outside?

A. The big caving was on the outside.

Q. On the outside?

A. Yes, sir.

Q. It caved on the lower end on the outside?

A. Yes, sir.

Q. Had it caved much on the lower end?

A. It caved a right smart on the lower end.

Q. Did the big trees fall in the river as it caved?

A. Sometimes it would.

Q. Now then, you lived at Brunswick until 1896?

A. Yes, sir.

Q. After 1896, where did you go when you left Brunswick?

A. Vicksburg.

Q. You went to Vicksburg?

A. Yes, sir.

[fol. 509] Q. How long did you stay in Vicksburg?

A. I stayed in Vicksburg from '97 up until '16.

Q. Up until 1916?

A. Yes, sir.

Q. After you left Brunswick, moved away from there and went to Vicksburg, you did not live up in that section any more?

A. No; I did not live at Brunswick any more.

Q. From the time you lived or the time that you *you* moved to Vicksburg.

A. No, sir; I did not live at Brunswick any more.

Q. And you moved to Vicksburg, and lived at Vicksburg until 1916?

A. Yes, sir.

Q. That's Vicksburg, Mississippi?

A. Yes, sir.

Q. Now, where did you go after 1916?

A. Up here where I am at now, Chotard. I moved back to Chotard.

Q. When you moved from Vicksburg in 1916 where did you move to?

A. Moved back to Chotard.

[fol. 510] Q. Is Chotard a place on the river?

A. Yes, sir.

Q. Marked Chotard Landing?

A. Yes, sir.

Q. Where is that with reference to Maj. Higgins' place, south or north?

A. South of Maj. Higgins' place, Chotard is.

Q. After you went to the Chotard place in 1916 how long did you stay there? How long did you remain there after you went there?

A. Three years.

Q. When did you leave there?

A. I left Chotard in '24—'24 or '25, one. I moved from there to Dumbarton.

Q. I thought you said you went there in 1916?

A. I did.

Q. And only remained three years?

A. Three years.

Q. That would be in 1919, wouldn't it?

A. Yes, sir; 1919. I went to Dumbarton. That is a place called Shilo Landing.

Q. That is on the Mississippi river?

[fol. 511] A. Yes, sir.

Q. Where is that with reference to Chotard, north or south?

A. North of Chotard.

Q. How far north of Chotard?

A. About four and a half miles or five miles, maybe.

Q. What did you call that place?

A. Dumbarton.

Q. And how long did you stay at Dumbarton?

A. About four years.

Q. Is that the place that is owned by Mr. Foster?

A. No, sir; that was owned by Richardson & May, of New Orleans.

Q. You stayed at Dumbarton until 1924, did you?

A. Yes, sir.

Q. When you left Dumbarton where did you go?

A. I moved to a place called Five Mile Lake.

Q. Where is Five Mile Lake?

A. Right back of Dumbarton.

Q. Back away from the river?

A. Yes, sir.

Q. How long did you stay at Five Mile Lake?

A. One year.

Q. How long did you say?

[fol. 512] A. One year.

Q. Where did you go then?

A. Talullah. That is about ten miles north of Dumbarton.

Q. Up the Mississippi river?

A. Yes, sir; and right on the river.

Q. On the river?

A. Yes, sir; at a landing they call Fiddler.

Q. How long did you stay there?

A. One year.

Q. When did you move from there?

A. This year.

Q. In 1827?

A. Yes, sir.

Q. Where are you located now?

A. With Dr. Heath.

Q. Where is that?

A. Dr. Heath stays on Shilo, but he has got a place above Fiddler.

Q. How far above Chotard is the place you live now?

A. About ten or twelve miles, I guess. Maybe more than that.

Q. Have you ever worked in the field any?

A. Yes, sir.

[fol. 513] Q. You farm?

A. Yes, sir.

Q. Where?

A. Eustacia and Brunswick.

Q. Eustacia was Maj. Higgins' place?

A. Yes, sir; I was less than ten years old.

Q. You worked on a farm when you were ten years old?

A. Yes, sir.

Q. And the next place you went to was where?

A. Brunswick.

Q. That is how far below Maj. Higgins' place—Brunswick?

A. About eight miles.

Q. And how far below Island 98 is Brunswick?

A. How far below?

Q. How far below Island 98 is Brunswick, the place you were at up until '96?

A. It is eight miles.

Q. About eight miles below Island 98?

A. Yes, sir; Brunswick is.

Q. Now, during the ten years from '86 what did you do?

A. Farm.

Q. The whole time?

[fol. 514] A. Yes, sir.

Q. And you never went on the river until after 1896?

A. I run the river in '97.

Q. You went on the river in '97?

A. Yes, sir.

Q. Well, you never went on the river at all until after you went to Vicksburg?

A. No, sir.

Q. Did you farm any of the time that you were running on the steamboats?

A. No, sir.

Q. When you went to Vicksburg in 1897 how long did you stay there?

A. I stayed on the river from '97 till '16.

Q. From 1897 you stayed on the river until 1916?

A. Yes, sir.

Q. Running out of Vicksburg?

A. Yes, sir.

Q. When you first recollect Island 98 you say the channel of the river was on the west?

A. Yes, sir.

Q. On the west of Island 98?

A. Yes, sir.

[fol. 515] Q. And between Island 98 and the Louisiana shore?

A. Yes, sir.

Q. Now, you say that it changed and came on the side across Island 98, the Mississippi side of Island 98?

A. Yes, sir; for awhile it did.

Q. You say for awhile?

A. Yes, sir.

Q. At what time did that change take place?

A. I can't really remember the year, but to my memory I think it was somewhere in 1912 or 1911.

Q. In 1912 or 1911?

A. Yes, sir.

Q. Now then, you mean that it was in '12 or '11 that the change took place in the river?

A. Yes, sir.

Q. Is that the time that the river broke through and cut off and left off a big lot of land?

A. Yes, sir; it goes around by the Louisiana shore then.

Q. The change that you are talking about was when the river cut through that piece and went over by the Louisiana shore?

A. Yes, sir.

Q. That is the only time? I understood you to say awhile [fol. 516] ago that at some period the Mississippi river run between Island 98—some period after '86, the Mississippi river run between Island 98 and the Mississippi shore?

A. I said during the high water.

Q. The channel never did go in there?

A. No, sir.

Q. That was just during high water?

A. Yes, sir.

Q. All that time you are talking about—during all that period, during low water, you could walk across the island?

A. Yes, sir.

Q. You could do that all along?

A. Yes, sir.

Q. And it never did get so during low water that you could not walk across from the Mississippi shore to the island?

A. No, sir.

Q. So the Mississippi packets, the boats, as far as you know, never did run in between the island and the Mississippi shore?

A. No, sir.

Q. And the only boat that came in there was a little boat like the Issaquena, and those smaller boats?

A. Yes, sir.

[fol. 517] Q. And that was during high water?

A. Yes, sir.

Q. They could only run during high water?

A. Yes, sir.

Q. They could not run in there except during high water, according to your recollection? Is that true?

A. Yes, sir; and during low water they landed at the head of the island.

Q. The channel of the river never was between the island—the main channel of the river for the big steamboats never did go between the island and the Mississippi shore?

A. Only during high water time.

Q. Now, you say that you hauled wood from the island?

A. Yes, sir.

Q. You hauled it across that channel?

A. Yes, sir; across that chute.

Q. Do you recollect when that was, now?

A. About '85, along there.

Q. Along about '85 you hauled wood across there to the Mississippi shore?

A. Yes, sir.

Q. Now, when you were talking about the channel chang-
[fols. 518 & 519] ing back, you are talking about 1911 and 1912, when the river cut through?

A. Yes, sir.

Q. Is that the only change back that you know about?

A. Yes, sir; all that I can remember.

Q. There was no other change back except that?

A. No.

Q. Now, you were living in Vicksburg from 1897 to 1916. Then you were in Vicksburg and running the river at the time of that cut-off?

A. Yes, sir.

Q. Did you call it the cut-off?

A. Yes, sir; I used to call it the cut off.

Q. How long was it in making through there? Did it go through pretty quick?

A. No, sir.

Q. Did it start one year and finish up the next?

A. Yes, sir; that was the way it was done.

Q. After that cut off had gone through there thoroughly did the boats stop running around the old channel and go through the cut off?

A. Yes, sir.

Q. Do you recollect at about what time they started

[Printer's Note.—Side folio page 519 missing.]

[fol. 520] immaterial. It calls for his understanding, and he has no knowledge of the title of that land. I just want to get the objection in the record.

By the Commissioner:

Q. Go ahead and answer the question.

By Mr. Brandon:

Q. Go ahead and answer the question? Do you know whether it was in Mississippi or Louisiana?

A. Mississippi is my idea.

Q. Across the other side of Mississippi you thought was Louisiana?

A. Yes, sir.

Q. Do you know what that was called over there opposite the island?

A. They used to call it Willow Point, I believe.

Q. Was there a tow head over there on the other side of the river called Newman's Tow Head?

A. Yes, sir.

Q. You knew Newman's Tow Head?

A. Yes, sir.

Q. That was higher than the balance of the bar, was it?

A. Yes, sir.

[fol. 521] Q. Was that a long bar there at Willow Point?

A. A pretty long bar.

Q. How far would you say that bar extended out, before the cut off, from the Louisiana shore? What would you estimate it? Some four or five miles?

A. About five miles.

Q. That bar extended out from the Louisiana shore plumb out to the channel of the river?

A. Yes, sir.

Q. And the Newman Tow Head was right there at the end of that bar on the Louisiana shore?

A. Yes, sir.

Q. You heard that called Newman's Tow Head often, did you?

A. Yes, sir.

Q. And you are perfectly familiar with the fact that the Newman Tow Head, at that time, was over on the Louisiana side?

A. Yes, sir. I used to put off freight there.

Q. The Newman Tow Head was higher than the balance of the bar?

A. Yes, sir.

Q. There was bigger timber on it than there was on the balance of the tow head—do you know where that low place [fol. 522] back behind Newman's Tow Head was?

A. No, sir.

Q. You don't know that?

A. No, sir.

Q. Now, what was your position on those steamboats?

A. Captain of the watch and deck hand sometimes.

Q. And as a deck hand?

A. I was deck hand off and on fir fourteen or fifteen years.

Q. Deck hand off and on all the time?

A. Yes, sir.

Q. What was your duty as deck hand on all of those steamers?

A. To get out freight.

Q. You did not have to look out for sand bars and islands and all of those sort of things?

A. No, sir; no more than——

Q. (Interposing.) That was not a part of your duty?

A. No, sir; only when the pilot would ring the bell to measure the water.

Q. Measure the water when the Captain would tell you?

A. Yes, sir.

[fol. 523] Q. Did you know Capt. De Lahunt?

A. Yes, sir; I know Mr. John De Lahunt.

Q. Do you know him well?

A. Yes, sir.

Q. Do you know whether he was the pilot on any of those boats that you were on?

A. Yes, sir; the Ruth, Chattahootchie and Belle of the Bend.

Q. Practically all of the boats that you have mentioned?

A. Yes, sir.

Q. He was pilot on them?

A. Yes, sir.

Q. Will, can you read and write?

A. A little.

Q. What grade did you get to in school?

A. Never was no further than the Fourth.

Q. In fact, you went to work when you were ten years old, and worked in the fields over there when you were ten years old and after?

A. Yes, sir.

Q. And you did not have much chance to go to school?

A. No, sir.

[fol. 524] Q. During that period of time there were not many schools, were there?

A. No, sir.

Q. You did not have much opportunity to go to school?

A. No, sir.

Q. Did you live a great distance from the school?
A. Yes, sir.
Q. How far?
A. About six miles.
Q. Now, I understood you to say that the last that you knew of Mr. Scruggs—I don't know whether I am correct or not—was in 1886?
A. Yes, sir; I left him there.
Q. You left him there?
A. Yes, sir.
Q. And went to Vicksburg?
A. Yes, sir.
Q. And left Scruggs on the island?
A. Yes, sir, what year he moved I don't know.
Q. You don't know when he moved from there?
A. No, sir.
Q. And you don't know where Scruggs is now, do you?,
A. No, sir; I do not. He had a little place down there—[fol. 525] down there below Chotard, but whether he is there now or not I don't know. Whether he is there, or sold his place or something, I don't know. I don't know what has become of him.
Q. That is all.

(Witness excused.)

By Mr. Creekmore: The defendant rests, reserving the right to introduce such documentary testimony, if any, that it may deem necessary to meet the objections to the testimony already offered.

By Mr. Dale: It is agreed by complainant that the objection made on page 277 of Volume 2 of the testimony to the Mississippi Levee District Map of Albermarle Bend, L-B 567-572 showing changes in the channel from 1882 to 1906 by C. H. West, Chief Engineer, dated at Greenville, Mississippi, April 5th 1906, as Exhibit No. 5, to the testimony of this witness is withdrawn.

No further evidence is to be introduced by either side, except either side has the right to authenticate any evidence introduced, if they can do so, or otherwise make competent record evidence already offered.

[fol. 526] By Mr. Creekmore: It is stipulated between counsel for Louisiana and Mississippi that all Acts of Congress relating to the organization both as states and territories, of Louisiana and Mississippi, and all constitutional provisions and statutory provisions of each state as to the boundaries of their respective states, shall be considered as in evidence, without formal offer thereof, and may be so treated by the Court, and referred to by the respective parties in the presentation of the cause.

CERTIFICATE OF SHORTHAND REPORTER

I, J. L. Barton, the official reporter who reported the proceedings and testimony on the hearing of the above styled and numbered cause, before Hon. Jack Thompson, Commissioner, hereby certify that the above and foregoing is a full, true, complete and correct transcript of the proceedings and testimony, both oral and documentary, offered and introduced during the hearing thereof; also of all exceptions taken and noted, and I now certify the foregoing to be such transcript.

In testimony whereof, I have hereunto signed my name, at Jackson, Mississippi, this the 28th day of January, 1927.

J. L. Barton, Shorthand Reporter.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. [redacted]riginal. 16

IN EQUITY.

THE STATE OF LOUISIANA,
Complainant,

versus

THE STATE OF MISSISSIPPI,
Defendant.

Original Brief of the State of Louisiana, Complainant.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925.

No. 22, Original.

IN EQUITY.

THE STATE OF LOUISIANA,
Complainant,

versus

THE STATE OF MISSISSIPPI,
Defendant.

Original Brief of the State of Louisiana, Complainant.

SYLLABUS.

JURISDICTION.

1. The judicial power of the United States shall extend * * * to controversies between two or more States.

Constitution of U. S., Art. 3, Sec. 2.

2. The Supreme Court of the United States has *exclusive jurisdiction of all controversies of a civil nature where a State is a party*, except between a

State and its citizens or aliens, in which latter case it shall have original, but not exclusive, jurisdiction.

State of New Hampshire v. Louisiana, 27 L. Ed., 665.

Judicial Code, Sec. 33.

3. The original jurisdiction of the Federal Supreme Court extends to suits by one State against another.

Oklahoma v. Texas, 66 L. Ed., 771.

Oklahoma v. Texas, 65 L. Ed., 832.

Louisiana v. Mississippi, 50 L. Ed., 913.

4. Such suit is one in equity.

Oklahoma v. Texas, 65 L. Ed., 832.

Arkansas v. Mississippi, 63 L. Ed., 832.

CONTROVERSY BETWEEN STATES.

5. A dispute between States respecting their boundary line, "*creates a controversy between the States in their sovereign capacity.*"

Louisiana v. Mississippi, 50 L. Ed., 913.

BOUNDARY LINE.

6. The original boundary between the States of Louisiana and Mississippi from the 33rd degree north latitude, to the 31st degree was the Mississippi River.

Louisiana v. Mississippi, 50 L. Ed., 914-915.

7. The middle of the channel of navigation—not necessarily the deepest part—is commonly adopted as the boundary line, where navigable water constitutes the boundary line between two States.

Minnesota v. Wisconsin, 64 L. Ed., 558-563-564.
Iowa v. Illinois, 37 L. Ed., 57.
Washington v. Oregon, 53 L. Ed., 969.
Arkansas v. Tennessee, 62 L. Ed., 638.

8. The channel of navigation is called the thalweg, and in a river dividing two States, constitutes the boundary line. This is not necessarily the physical middle line.

Minnesota v. Wisconsin, 64 L. Ed., 563.

9. The boundary line between the States of Louisiana and Mississippi is the boundary line as it existed at the date of the Treaty by which Louisiana was acquired, subject to changes made by erosion or accretion.

See *Oklahoma v. Texas, 67 L. Ed., 435.*

10. In the application of this principle the boundary line between the States of Louisiana and Mississippi is necessarily reckoned from the date of the earliest surveys and plats, which is 1823 and 1824, as these plats afford the earliest evidence of the location of the Mississippi River. The line is as it then existed, subject to changes by erosion and accretion.

11. Where a navigable river is the boundary line between two States and the channel of navigation

is changed by the natural and gradual processes known as erosion and accretion, the boundary follows the varying courses of the stream.

New Mexico v. Texas, 72 L. Ed., 127, in No. 4.
Oklahoma v. Texas, 69 L. Ed., 578, in No. 5.
Oklahoma v. Texas, 68 L. Ed., 1120.
Oklahoma v. Texas, 67 L. Ed., 435.
Arkansas v. Tennessee, 62 L. Ed., 638.
Nebraska v. Iowa, 36 L. Ed., 186.
New Orleans v. U. S., 9 L. Ed., 573.
L. R. A., 1918 D., 258.

12. An avulsion is where a river suddenly leaves its old channel and makes a new one, either from natural or artificial causes.

Oklahoma v. Texas, 67 L. Ed., 435.
Arkansas v. Mississippi, 63 L. Ed., 832.
Arkansas v. Tennessee, 62 L. Ed., 638.
Missouri v. Nebraska, 49 L. Ed., 881.
Nebraska v. Iowa, 36 L. Ed., 188.

13. Where, in a stream which is the boundary line between two States, an avulsion occurs, the resulting change in the channel works no change in the boundary, which remains in the middle of the old channel as it existed just prior to the avulsion (subject to change by accretion as long as the water continuously flows therein).

Arkansas v. Tennessee, 70 L. Ed., 208.
Arkansas v. Tennessee, 62 L. Ed., 1213-638.
Oklahoma v. Texas, 67 L. Ed., 435.

Arkansas v. Mississippi, 63 L. Ed., 832.
Missouri v. Nebraska, 49 L. Ed., 881.
Nebraska v. Iowa, 36 L. Ed., 188.

14. Suddenly does not mean a specific length of time. Its meaning is relative, depending for its length of time upon the subject to which it is applied. To suddenly shoot an antagonist would mean instantly.

    For a river to suddenly change its course by avulsion and cut through a six-mile neck of land, might require a year. The process of cutting might be sudden and forcible, and rapid, but the time required would depend to some extent upon the width of the land to be cut through to make the new channel.

15. Whether a cut-off in a river requiring a year or more to make can be called an avulsion is immaterial, as the same principles of law that apply to an avulsion must necessarily apply to such cut-off.

16. While, after an avulsion or cut-off made by a river which is the boundary between two States, the boundary immediately after the cut-off is the same, as just prior thereto, such boundary is subject to change by accretion as long as the water *continuously* flows through the old channel, but when the water ceases to run therein, and becomes stagnant, the boundary line becomes *fixed* in the middle of the old channel at such time and the gradual filling up of the bed that ensues, is not

to be treated as an accretion, but as an ultimate effect of the avulsion.

Arkansas v. Tennessee, 70 L. Ed., 208.
Arkansas v. Tennessee, 62 L. Ed., 638.

17. In establishing such boundary line in the old channel, "absolute accuracy is not attainable. A degree of certainty that is reasonable, as a practical matter, having regard to the circumstances is all that is required."

Arkansas v. Tennessee, 70 L. Ed., 208.

18. Where there is an avulsion causing the drying up of the old bed, it does not have the effect of establishing as the boundary the ancient boundary, as it existed at the earliest record.

Arkansas v. Tennessee, 62 L. Ed., 639.

19. Where the water cuts through an accretion *once vested*, it does not destroy the ownership of the land cut off from the main body.

DeLassus v. Faherty, 164 Mo., 361; 64 S. W., 183.
Cited in *15 Dec. Nav. Waters, Sec. 44 (3).*

20. Where a navigable river is the boundary between two States and the river is changed several miles by erosion on one side and accretion to the other, the boundary between the States changes with the river, although the accretion to one State covers the *location* formerly belonging to the other State.

See *Doebbeling v. Hall, 41 A. L. R., 389.*

21. Land formed beginning next to the shore extending into the channel is accretion, though higher next to the channel.

State of Kansas v. Merriweather, 182 Fed., 457.
15 Dec. Nav. Waters, Sec. 44 (3).

22. One asserting material changes in the course of a boundary river which will affect the boundary has the burden of proving them.

Oklahoma v. Texas, 67 L. Ed., 428.

23. Circumstances sometimes carry with them a conviction which the most positive testimony will sometimes fail to produce.

The Robert Edwards, 5 L. Ed., 238.

24. Circumstances altogether inconclusive, if separately considered, may, by their number and joint operation, be sufficient to constitute conclusive proof.

Kemper v. Churchill, 19 L. Ed., 461.
Castle v. Bullard, 16 L. Ed., 421.
Wagner v. Hall, 21 L. Ed., 504.

25. The mere fact of the assertion of territorial jurisdiction by a government over territory in dispute between it and another one, and the enforcement there of its civil and criminal laws for a period of years, is not sufficient to establish its title to the territory where there has been neither a continuous assertion of right on the one side, nor an acquiescence therein upon the other.

State of Oklahoma v. State of Texas, 171 L. Ed., 146.

STATEMENT SHOWING JURISDICTION.

This is a suit in equity, brought by the State of Louisiana versus the State of Mississippi, to settle a controversy between the States over the locaton of the boundary line between them.

The answer admits that such controversy has arisen between the complainant and the defendant, in which no agreement can be reached and that it is necessary that same should be settled by the Supreme Court of the United States.

The authorities to show jurisdiction are cited in the syllabus herein, in authorities numbered 1 to 8, inclusive.

STATEMENT OF FACTS.

The facts, as shown by the evidence in this case, are as follows:

That the bank of the Mississippi River, in front of what is known as Willow Point, and adjacent properties, in the Parish of East Carroll, Louisiana, subsequent to the year 1824, was added to by accretion, the river bank of the Louisiana shore gradually extending in an easterly or northeasterly direction, until in 1912, when it had reached a point about five miles east of the original western bank of the Louisiana shore, as shown by the original survey made by the United States in 1824, and that while the accretion was adding to the Louisiana shore, the bank of the Mississippi shore, at what is known as Albemarle Bend, on the Mississippi side of said river, opposite Willow Point, and adjacent

properties, had gradually worn away by erosion, caved into the Mississippi River and disappeared. The caving or erosion on the Mississippi shore causing it to recede about the same distance as the accretion extended the Louisiana shore. That Tullos' Island, or Island No. 98, on the Mississippi side of the channel opposite Willow Point, and most, or all, of Hopkins' Island, a little above on the Louisiana side of the channel had caved into the river and disappeared.

That as the shore of the Mississippi River on the Louisiana side gradually extended easterly by accretion and the shore of said river on the Mississippi side gradually receded easterly by erosion, the thalweg or navigable channel of the Mississippi River, as well as the entire river, gradually and continuously moved in an easterly direction until, in 1912, it had reached a distance of about five miles from the original channel as shown by the surveys of the United States. See the testimony of Mr. West. (R. 39).

The original survey of the territory in the State of Mississippi, opposite Willow Point in Louisiana, was made in 1823, between which time and 1912, the Mississippi River shore line, on the Mississippi side, had worn away by erosion, a distance of some five miles, or more. That all, or a part of the following sections in the State of Mississippi had worn away by erosion, caved into the Mississippi River and disappeared, to-wit: Sections 8, 9, 10, 15, 20, 21, 22, 27, 28, 29, 30, 31, 32 and 33, in T. 8 N., R. 9 W. That Tullos' Island, or Island 98, which was embraced within the above sections, disappeared entirely. During the same time the Louisiana shore at Willow Point, and adjacent prop-

erties extended easterly and northeasterly by accretion, covering all, or most of the location formerly occupied by Tullos' Island, which was formerly territory of the State of Mississippi, and which had been washed away and caved into the river; and the main channel of the river having progressively swept over what had been the location of Tullos' Island.

That the State of Mississippi, under the mistaken impression that this was still Mississippi territory, undertook to sell all, or a large part of the accretions, to Louisiana which had thus made out over and covered the former location of the above sections, describing same in its patents or deeds as being the same sections shown in the original survey of 1823.

That when the Mississippi River reached the farthest eastern point from the Louisiana shore line of 1824, the earliest survey, which it did in 1912, the Louisiana shore line having travelled easterly a distance of about five miles from said earliest survey, and the Mississippi shore having receded an equal distance, the river maintaining approximately the same width, an avulsion occurred, through what was known as Willow Point bar, being the accretion attached to the Willow Point property in East Carroll Parish, La., the Mississippi River leaving its old channel and cutting a new channel through said bar.

That after the cut off of 1912, navigation continued through the old channel until 1913, after which it went mostly through the new channel. As soon as the cut off of 1912 was made, the current in the old channel slackened very much and the upper end of the old channel began to fill up by deposits, which continued

rapidly until 1916, when the upper end of the old channel had so filled that not even small boats in high water could go through it. The lower end of the old channel has never entirely closed, a chute running up from the lower end for some distance. There has been no navigation of the old channel since 1916.

After the cut off in 1912, some current, though much slackened, continued to flow through the old channel until 1916. During the period between 1912 and 1916, accretions in the old channel attached to both sides of the old channel; that is to the eastern side of Newman's Towhead (which was the eastern extremity of Willow Point bar, and by the cut off of 1912 made an Island) and the western bank of the Mississippi shore along Albemarle Bend. How much of the accretion in this abandoned channel attached to Newman's Towhead and how much to the Mississippi shore in Albemarle Bend, was not established definitely by the oral evidence; but more went to Newman's Towhead, Newman's Towhead being on the convex side and Albemarle Bend, and Mississippi shore, being on the concave side of the river, the presumption would be that most of the accretion attached to Newman's Towhead, for the reason that bars are always formed on the convex side and the deep channel is always on the concave side of the river.

The physical fact in this regard is evidence that most of the accretion in the filling up of the old channel attached to Newman's Towhead.

The most eastern part of Willow Point bar was called Newman's Towhead. This was formed prior to 1912 out on the end of the bar, next to the river. It

built up higher each successive high water until it was as high, or higher than the main Louisiana bank, and it had cottonwood and willow on it; some of it eight or ten feet high, in 1897. In 1912, at the time of the cut off, some of it was about 18 inches in diameter.

Between this Towhead and the other part of Willow Point bar, there was a depression, on which there were no trees, or very small ones. In ordinary stages of water one could walk from the Louisiana shore across Willow Point bar to Newman's Towhead, but when the water was at a high stage, small boats could run between Willow Point and Newman's Towhead. The channel of navigation of the Mississippi River, after the formation of Newman's Towhead, was at all times, prior to the cut off of 1912, east of Willow Point bar, and Newman's bar, and between Newman's Towhead and the Mississippi shore. There never was a channel of the river between Newman's Towhead and the Louisiana shore, prior to the cut off in 1912.

Walter R. Newman owned Willow Point Plantation and bar, and Newman's Towhead formed on this bar and was called Newman's Towhead on that account. The Newmans, who owned Willow Point and bar, always claimed to own Newman's Towhead, and their cattle, during their ownership, which was until about 1907, ranged upon it, and no one else had any possession or control of Newman's Towhead, prior to the time the Newmans sold same, about 1907.

The following is an epitome of what complainant's exhibits show:

"A"—Shows Government Survey of Louisiana in 1824, in T. 19, R. 13 & 14,

covering Willow Point. (R. 137-147).

"B"—Shows Government Survey of Louisiana in 1924, *in T. 18, R. 13.*

"BB"—Shows Hopkins' Island, survey in 1869 and 1870. (R. 138-147).

"C"—Is a chart of the Mississippi River Commission Survey of 1882. It also shows, in red lines, solid and broken, the 1894 survey of the Commission; being Sheet 17 of the Mississippi River Commission Survey. (R. 21-138-148-151.

"D"—Is same as "C," with addition of shore and bar line of the Commission's survey of 1903-1906, and changes by accretion and erosion, being Sheet 17 of the Mississippi River Commission Survey. (R. 21-138-148-151).

"E"—Is a chart of the Commission's survey of 1913, and is shown on Sheet 17 of the Mississippi River Commission Survey. (R. 21-138-148-152).

"EE"—Is a certified copy of Chart No. 45, made by the Mississippi River Commission, 1879, 1880 and 1882. (R. 21).

"EEE"—Is a certified copy of Chart No. 46, made by the Mississippi River Commission, 1879, 1880 and 1882. (R. 21).

"F"—Is the same as "E" but is on a scale of 1 to 20,000 and is shown on Chart No. 47 of the Mississippi River Commission Survey. (R. 21-138-148-152-153).

"G"—Is a blue print #1 made by Capt. C. H. West, C. E., covering township and section lines of the Government Survey of 1823 of Mississippi, and of 1824 of Louisiana, and river bank lines of the same survey. (R. 138-153).

"H"—Is a blue print #2 made by Capt. C. H. West, C. E., showing river bank lines in 1882 and section lines of Government Surveys of 1823 of Mississippi, and of 1824 of Louisiana. (R. 138-139-148).

"I"—Is a blue print #3 made by Capt. C. H. West C. E., showing position of the two banks of the river as they existed at the time of the survey by the Mississippi River Commission in 1894, and section lines of Government Land Surveys of 1823 of Mississippi and of 1824 of Louisiana. (R. 138-140).

"J"—Is a blue print #4 made by Capt. C. H. West, C. E., showing the position of the Mississippi River at the time of the Commission Survey of 1913, and showing the avulsion of 1912, and

showing Government Land Survey section lines of the survey of 1823 of Mississippi and of 1824 of Louisiana. (R. 138-140).

Exhibits "G," "H," "I" and "J" are all blue prints made by Capt. C. H. West, C. E., to illustrate the changes by accretions and erosions from the time of the Government Surveys in 1823 and 1824 until 1913. Capt. C. H. West is a member of the Mississippi River Commission. (R. 138-139).

"K"—Shows land patents from State of Mississippi. (R. 6-129).

"L"—Shows tax sales by State of Mississippi. (R. 6-7-129).

"M"—Shows Charts 45 and 46 of the Mississippi River Commission combined in one map covering the reach of the Mississippi River in question. (R. 131 to 136-147).

"N"—Is a blue print showing T. 9, R. 8 West of Mississippi Survey of 1823. (R. 137-147).

At some period prior to the survey of 1894 there were two islands in the Mississippi River near Willow Point, namely Hopkins' Island and Tullos' Island, or Island No. 98.

Hopkins' Island, shown on Exhibit "BB" was in the Mississippi River, on the Louisiana side of the channel, and was Louisiana territory in 1870, and was nearly opposite but a little up the river from Tullos' Island.

Between 1870 and 1882, the evidence not showing the exact date, the Mississippi shore line began to build out in a southwesterly direction *above* Tullos Island, and Hopkins Island began to cave and disappeared, or mostly disappeared, and the channel of the river in 1882, was over the position, or most of the position formerly occupied by Hopkins' Island in 1870. In 1882, the Mississippi shore line of the river was along what had been the eastern boundary line of Hopkins' Island.

On the surveys of 1823 and in 1870, the Island in the Mississippi easterly from the most eastern part of Willow Point Plantation below Hopkins' Island was called Tullos' Island. Afterwards the islands in the Mississippi River were numbered, and Tullos' Island was numbered 98, and was afterwards called Tullos' Island, or Island No. 98. This island, as it existed at the time of the survey of 1823, is shown on the blue print marked "G." At this time it occupied parts of Sections 20, 21, 28, 29 and 30 in T. 9 N., R. 8 West, in the State of Mississippi.

The exhibit marked "H" being the survey of 1882, shows that the part of Tullos' Island, or Island 98, which lay in Sections 20, 29 and 30, had crept (caved) into the river and only that part which lay in Sections 21 and 28 existed at that time. (R. 139).

Exhibit "I" shows the two banks of the Mississippi River as they existed in 1894. At this time the Mississippi shore had receded eastward, until all of Tullos' Island, or Island 98, had disappeared and the Mississippi shore line was about 1/4th of a mile east of where Island No. 98 had been. (R. 140).

(That is, said shore line was about 1/4th of a mile east of the most eastern part of where Tullos' Island, or Island 98, had been).

Tullos' Island, or Island 98, entirely disappeared, between the time of the survey of 1882 and that of 1894.

After the survey of 1882, the next general survey was that of 1894. This survey was platted on the chart of 1882, shown as Exhibits "C" and "D." The shore lines of the survey of 1894 are shown in red lines on the face of the 1882 chart. (R. 151).

(This is Sheet No. 17 of the Mississippi River Commission Survey Plat).

Chart "C" shows the Mississippi River as it existed in 1882 in *black* lines. There is also shown on the chart of 1882, in *red lines*, the two banks of the Mississippi River, as shown by the survey of the Mississippi River Commission in 1894. The *broken red lines* on said chart indicate the edge of the bar at the time of the survey (1894). (R. 138).

(The water line of the Mississippi River in 1894, on the Louisiana bank and on the Mississippi bank, is

shown by the broken red lines, on the chart of the Mississippi River Commission of 1882).

The river above Tullos' Island, or Island 98, and along the northern part of Willow Point, and adjacent property, for a distance of five or more miles, ran in an easterly direction.

From the northern part of Willow Point there has been a gradual caving as far back as any of the witnesses could recollect. One of them, Mr. I. B. Beard, could recollect fifty years back; but he was only nine years old at that time, 1876. During that time, the caving, on the part of the Willow Point farthest up the river, had reached a distance of about one and a half miles.

While this gradual caving was in process along the north side of said Willow Point, the Mississippi shore opposite was extending in a southward direction by accretion. At the same time the eastern and northeastern part of Willow Point was extending eastwardly toward the Mississippi shore rapidly, and the Mississippi shore receding rapidly. The result was that Willow Point, Louisiana territory, gained very much more by accretion during said period, than it lost by erosion; as it had extended by accretion a distance of about five miles.

The timber on the main original bank of the Louisiana side of the river consists of cottonwood, a few sycamore, elm and gum, and other trees such as are produced by older soil.

In 1882, the timber on Tullos' Island was such as grows on older soil, there being some hackberry, gum and other timber.

The timber on Newman's Towhead was and is cottonwood and willow, such as is produced on accretions.

The timber on what defendant claims is Tullos' Island is practically all cottonwood and willow and not timber produced by older soil, but such as grows on accretions.

Testimony of Capt. George Prince.

He is fifty-six years of age, and is a steamboat captain and pilot on the Mississippi River between Memphis and New Orleans. (R. 21).

He had been a pilot for thirty years. He was acquainted with the Mississippi River at Willow Point and vicinity (Ev. 5), and had been since 1897, and had passed said place from six to ten times that year. (R. 22).

He passed said point about from six to ten times each year from 1897 to 1914, and, from 1914 to 1920, he ran there regularly. During this time he became acquainted with the conditions along the main shore. (R. 23).

Willow Point was a sandbar in 1897. It was a dry sandbar for a good way out in the river, and back two or three hundred yards there was a growth of willows and cottonwood. Willow Point was connected with the Louisiana shore, and the bar was *three* or *four* miles long when the water was low. (R. 8).

The bar extended east toward the Mississippi shore *three* or *four* miles. The bar kept building each year (R. 24) toward the Mississippi shore line, and out from the Louisiana shore line. As far back as 1897, at the time of his first acquaintance with the river at Willow Point, the current was along the Mississippi shore. In his trips he landed his boat on each side of the river at said point. (R. 25).

In 1897 there were no islands in the Mississippi River, in the vicinity of Willow Point. There has never been an island there since he had been running the river. (R. 25-26).

He never knew of Island No. 98. (R. 34).

(The Mississippi River Commission Survey showed that said island had entirely disappeared in 1894). The Willow Point bar remained connected with the Louisiana shore. (R. 26). (Until the cut-off of 1912 separated the eastern portion from the remainder). Willow and cottonwood grew on the bar, and where they grew the bar built up higher than the mainland, and this high point was called "Newman's Towhead." A towhead is kind of middle ground in the river that trees and bushes grow on. This towhead had willow and cottonwood on it. The river at this time was toward the Mississippi shore from the towhead, until 1912. (R. 27).

A towhead is a high place on a sandbar where willow trees grow generally connected with the main shore. (R. 32).

The reason the towhead builds up higher is that when the trees grow thereon, the sand piles up against them like a snow drift. (R. 32).

In 1912, the river broke through at the towhead and sandbar, and the channel of the river went through there. He was going up the river and saw the break through the willows. This was during the high water of 1912.

He did not go through the new channel at this time, but went around the main (old) channel, which was between Newman's Towhead and the Mississippi shore. (R. 27-28).

The old channel was then open. In 1916 boats could not go through there even in low water. (R. 28).

The cottonwood trees on Newman's Towhead were about 8 to 10 inches in diameter (1897). (R. 29).

Since the cut-off the old channel at the upper end of Albermarle Bend has filled up entirely. (R. 29).

In 1920, the current ran between Newman's Towhead and Willow Point. (R. 30).

Prior to 1912, Willow Point bar was higher next to the river and the high part was called *Newman's Towhead.* (R. 26-27).

It commenced to form right up the Louisiana shore, and ran down the river 4 or 5 miles. (R. 42).

The river broke through there in 1912. (R. 27).

After the cut-off, the channel of the river went down through the middle of the bar between the Louisiana shore and Newman's Towhead. (R. 31).

After the cut-off, Newman's Towhead became an island and continued to grow; the old bed filled up. (R. 31).

Up to 1912 the bar grew gradually and steadily out from the Louisiana shore, or Willow Point, toward the Mississippi shore, and the Mississippi banks were caving rapidly, and the Government was revetting the Mississippi shore at Albermarle Bend, I think, in 1910. (R. 30).

I think they continued this work two years. (R. 30).

Albermarle Bend was the channel of the river as it existed prior to 1912 between the Mississippi shore and Willow Point. (R. 26).

To my knowledge up to 1912, Willow Point sandbar had extended out toward the Mississippi shore, about 5 or 6 miles (R. 31), in a northeasterly direction. (R. 33).

When land makes by accretion, it very often leaves a lake intervening. (R. 37).

The bar in front of Tennessee Landing on the Mississippi side, extended toward the Louisiana shore close to a mile, it might have been more, he did not know. (R. 46).

This bar extended down the river more than four miles—4½ miles from Tennessee Point. (R. 46).

Testimony of Ernest Newman.

He was 37 years of age. Was born in East Carroll Parish, La. (R. 49), on *Willow Point Plantation*, being the property marked on the map as Willow Point. This place was owned by his father, Walter A. Newman. He could recollect as far back as 1897. (R. 50).

The Willow Point bar had extended out from the mainland about 3 or 3½ miles when he could first recollect, and it continued to grow, or extend toward the Mississippi shore, for about 1½ or 2 miles, until the cut-off of 1912, it had extended a distance from the main shore of 4½ or 5 miles. He lived on Willow Point until 1907, when he went to Lake Providence, in the same parish, about 25 miles north of Willow Point. (R. 50-51).

He afterwards visited Willow Point, practically every winter to hunt; after they removed from the property, they kept camp there. The State levee ran about 100 yards behind their house. It was afterwards moved back about 2½ miles. (R. 51).

The timber on the mainland was principally cottonwood and willow; some gum and some oak; outside the main shore it was principally cottonwood and some willow.

From 1897 until the cut-off in 1912, there was no island between Willow Point and the main shore (necessarily Mississippi shore). (R. 51-52).

There was what was called Newman's Towhead on the bar, as far back as the witness could recollect, and the Towhead was connected with the main Louisiana shore. There was no river between the Towhead and the shore. The main channel of navigation was east of the Towhead, between the Towhead and the Mississippi shore. (R. 52).

After the cut-off of 1912, Newman's Towhead was left on the east side of the river. (R. 52).

As the bar belonging to his father extended easterly, the Mississippi shore was caving, and revetment work was done there by the United States Government. When he first knew Newman's Towhead the timber on it was willow and cottonwood, and *was 8 or 10 feet high*, as well as he could recollect.

At the time of the cut-off in 1912, he thought it was about 18 inches in diameter. (R. 53).

We claimed Newman's Towhead. We owned the Willow Point Plantation, and the Towhead got its name from the Newman family. They had possession of the Towhead and had cattle on it. We paid our taxes in East Carroll Parish, Louisiana, and never paid any in Mississippi.

He had heard that such an island as Tullos' Island once existed. (R. 53).

But there had been no such island since he could recollect. From the time he could recollect (1897) until the cut-off (1912) there was no island at all in the Mississippi River at that place; and the first island

made there (since he could recollect) was that made by the cut-off (of 1912), leaving a part of the Newman bar on the East side of the river. He never knew of this land East of the Mississippi River (Newman's bar and Towhead) being claimed by Mississippi, until he was requested to be a witness in this case. (R. 54).

His father lived on the plantation and died there. (R. 54).

Witness had been all around the Mississippi shore and knew there was no island in the river (at the point involved). (R. 57).

At Albemarle Plantation there is now extending behind the island a chute extending in a general northerly direction; at the upper end it does not go back into the river now, but extends down and connects up (with the river below). This chute forms a lake in low water. (This chute is undoubtedly what was the former channel of the river, around Albemarle Bend).

He thought the timber was about 2 feet (in diameter) on Newman's Towhead, at the present time. Some might be over 3 feet, as it grows very rapidly on that sandbar. (R. 58).

He did not know where the old river channel of 1823 was, but there was a little chute that runs off from Henderson's; it was just a little chute behind the bar. It is just a kind of slough that runs up to Henderson's and it had been there since he could remember. This is almost south from Willow Point. (R. 59).

The map, Exhibit "J" shows Willow Point as Lots 6, 7 and 8, and it shows Newman's Towhead as going out in a general northeast direction, 5 or 6 miles, and he would judge there was more than 5000 acres of land in same, but he hardly thought his father was assessed with 5000 acres. The levee was moved back 2½ miles, and we had practically no taxes. (R. 59-60).

Testimony of George R. Newman.

Witness was 40 years old, and was born in 1886, on the *Willow* Point Plantation in Louisiana. (R. 64).

This place was owned by his father, Walter R. Newman; Ernest Newman, who testified yesterday, is his full brother. His father and mother were dead; his mother was a sister of I. B. Beard, who is here as a witness. (R. 65-66).

He could recollect back to 1893, at which time he was 7 years old. He rode about over the Willow Point sandbar, and began to hunt about that time. (R. 66).

He knew where the sandbar hit the main shore, from the change of the land and character of the timber. The timber on the main shore was cottonwood, willow, *a few big trees*, *pecan* and *sycamore*, and some *gum* and *oak*. (R. 66-67).

There is a depression at the place I have said was the mainland. The timber on Willow Point bar is cottonwood and willow. Our home was about 100 yards from the original mainland, on the outside of the levee next to the river. The levee was afterwards moved about 2½ miles further back. (R. 67-68).

We could walk at all times from the mainland out to the river, except in real high water; the bar was continuous. This condition existed until 1912, at the time of the cut-off. (R. 68).

During the time of his recollection, prior to the cut-off, there was no island in the Mississippi River, in front of Willow Point Plantation. After the cut-off, Newman's Towhead was an island, left by the cut-off east of the cut-off on the Mississippi side of the cut-off. (R. 69).

The timber on Newman's Towhead before and after the cut-off was cottonwood and willow. He was on Newman's Towhead frequently before the cut-off, but not since. He never heard of Newman's Towhead being claimed by Mississippi, until since this suit. (R. 69-70).

Witness left Willow Point in 1907 or 1908, and moved to Lake Providence, La., 25 miles distant, but returned to Willow Point every winter to hunt.

Witness was not there at the time of the cut-off, but went there immediately afterwards. The cut-off took place at the point, practically where the river runs now. (R. 70).

He had not been on the Towhead since the cut-off. (R. 71).

There was none of the towhead or land left on the east side of the channel that was in cultivation prior to the time I left there. *He never heard of Tullos' Island, or Island Number 98.* (R. 73).

He thought the towhead was 6 or 7 miles long, and 2 or 3 miles wide.

He never heard of an old plantation headquarters on said land. (R. 73-74).

Had not been on the Towhead since 1910. There was no channel where the present one now runs, prior to 1912. (R. 74).

> Q. Were not there three channels there back in the nineties, that you have been talking about?
>
> A. There was no other channel there but one that I knew anything about. (R. 74-75).

We never cut any timber off the towhead. All of the land there (Willow Point) was accretion formed by sediment from the river gradually and imperceptibly.

The lakes were formed from the fact that the filling by accretion is not level; it never fills up all the same. (R. 75).

We sold the Willow Point property in 1907 or 1908. (R. 77).

I suppose the Newman Towhead was sold with the place. The Newman family claimed the Towhead. (R. 78, 79).

I think it was in 1904 or 1905 that our house on Willow Point caved into the river. The current at this

time was against the north end of the place where the house was. (R. 79).

When I left Willow Point, about 1907, I went to Lake Providence and worked as Deputy Sheriff. Lake Providence is the parish seat. (R. 81-82).

This is in East Carroll Parish. (R. 82).

The part of Willow Point where our house was, caved in between the years 1904 and 1907, but I do not recollect the exact year. (R. 82-83).

All of Willow Point never did cave in, but it increased in size in an easterly direction, until 1912 (R. 83), while the northern part was caving, the eastern part was making; it made continuously. (R. 84).

When witness first knew Willow Point, the bar extended out about 1½ miles, and it was never less than that, but gradually got larger (R. 85), until it extended to a distance of about five miles. (R. 85).

Testimony of Mr. I. B. Beard.

He was 59 years of age; born October, 1866. Witness located Willow Point on the map marked Exhibit "C," and said it was in East Carroll Parish, La. He was born in said parish about 5 miles north of Willow Point. He became acquainted with Willow Point about 50 years ago. Walter A. Newman (who owned Willow Point) married witness' sister and Ernest Newman and George Newman were his nephews. (They were witnesses). He visited Willow Point quite often. (R. 85-86).

The Willow Point bar started where it joined the main bank. (R. 87).

On the mainland, 150 yards back of the house, there were a few *sycamore, gum* and *elm* trees. The timber on the bar was cottonwood and willow.

At the time he could first remember, the Willow Point bar had extended out one and a half, or two miles, from the mainland. It continued to grow each year until 1912, when it had extended three or four miles from the mainland, or it might have been further. The main bar was already there. The towhead began to grow, and each year it got higher and higher and *finally it got large enough for willows and cottonwood to grow on it.* (R. 88).

The bar on which the Newman Towhead arose was attached to the main shore of Louisiana. (R. 88, 89).

This bar and towhead were not severed prior to 1912. The timber on Newman's Towhead was cottonwood and willow. *When witness first knew the bar and towhead, the timber on it was from 3 to 5 feet high; it was little stuff.* It grows very rapidly. His brother-in-law cultivated a part of Willow Point, but none of Newman's Towhead that he knew of. (R. 88-89).

Prior to 1912, the main channel of the river was east of *Newman's Towhead*, and Willow Point bar, on the Mississippi side. Prior to the cut-off, witness never saw any island between Newman's Towhead and bar, and the Mississippi shore (but witness did not say there was none). After the cut-off, Newman's Tow-

head was left on the east side of the Mississippi River. Prior to 1912, there was caving on the northern part of the (R. 89-95) place, but, on the eastern part, it was extending further east.

On the northern part of Willow Point, the river ran east.

Witness never heard of any part of the property being claimed by Mississippi before he was a witness in this case.

Prior to the cut-off, the Newman heirs were regarded as the owners of Willow Point and Newman's Towhead. (R. 90).

The Newman heirs were George Newman, Ernest Newman, my sister and her family. (R. 90).

The river bounded the Willow Point property on the north side, and the river ran around the Point and also bounded it on the east side. (R. 93).

Testimony of Capt. W. H. Reed.

He was 54 years of age last March (1926). He was born at Natchez, Miss. (R. 96).

From the time he was able to work he had been a river man, timber man and steamboatman.

He is now Sheriff and Tax Collector of Adams County, Mississippi (the City of Natchez is in this county). He holds pilot's and master's licenses for steamboats, and has, since 1907 or 1908. (R. 96).

Witness' attention was directed to Exhibit "C" to complainant's bill, and he said he had been familiar with the condition of the shores at Willow Point since 1894. He and others camped on the Henderson property (adjoining). (R. 97).

He was then 22 years old. He remained there 6 weeks, gathering drift and timber for a wood yard. (R. 97-98).

At this time, there was a sandbar at Willow Point, possibly a mile wide; that is, out from the timber line to the point of the bar. It extended toward the Mississippi shore in a northeastern direction. (R. 98).

At that time this was a white sandbar, with no timber; today there is plenty there. ((R. 98).

There was timber along the main shore line in 1894. *A towhead* appeared on the sandbar. (R. 100).

The towhead was close to the Louisiana shore. (R. 100).

It continued to grow in height and size. The extreme northerly side of Willow Point property continued to cave. (R. 100).

And it continued to grow easterly, from the Louisiana shore, toward the Mississippi shore. (R. 101).

In 1900 the bar had increased about two miles, and it continued to grow east and northeaserly. (R. 102).

In 1911, 1912 and 1913, witness was towing timber past Willow Point property. In 1911, the accretions had extended out from the Louisiana shore line, about 3½ miles from the timber line of 1894, and it had extended further in 1912. (R. 103).

Witness *did not remember the exact year the towhead started to form but it became prominent in 1900. Steamboatmen took it as a land mark.* The Newman towhead was the last one; there was another inside the timber line. The Newman towhead was located on the outer part of the bar, *I would say 150 yards off from the timber* line on Willow Point property. (R. 103-104).

Cottonwood and willow grew on the Newman towhead; it was from 5 to 8 inches through in 1900.

In 1912 the river commenced to wash out the depression between the towhead and the main timber line on the bar.

It washed out quite an extent. (R. 104-105).

And made the cut-off virtually, but did not clean it out until 1913.

We used the old channel until 1913, when we began to use the new channel. (R. 105).

Prior to 1912 there was no island in the river. There was a towhead on Newman's bar; after the cut-off of 1912, Newman's towhead became an island, east of the new channel of the river. (R. 106).

Prior to the cut-off, there was a depression between the towhead and the old timber line, and, I think, in extremely high water, small boats went through there. (R. 107).

Prior to the cut-off of 1912, at all times except high water, there was a continuous stretch of land from the Louisiana mainland to the extreme easterly end of Newman's towhead, a distance of about 5 miles. After the cut-off the old channel began to fill up, at the head of Newman's towhead. (R. 108).

After the cut-off Newman's towhead continued to grow in an easterly and southeasterly direction. Boats could go through the old channel around Albermarle Bend until 1916, but, in 1916, the old channel had so filled that even small boats could not pass through. (R. 108).

Witness was on Newman's towhead in 1926. The timber on same is cottonwood and willow. The largest cottonwood, about a breast high, *would measure over 30 inches outside the bark.* (R. 109).

The willow, a breast high, outside the bark, would measure about 24 inches.

There is no *old original timber* of any kind on the towhead.

After the cut-off when the *old channel around Albemarle Bend began to fill up with alluvion, these accretions attached mostly to Newman's towhead.*

From 1897 to 1912, witness travelled through Albemarle Bend at least once a year and sometimes

several times. He was captain and pilot of a small towboat. (R. 110).

As captain and pilot it was necessary for him to observe the shores on either side, keep posted as to the condition of the bank, the course to run, the sandbars, and all changes that took place on either side of the river.

Albemarle Bend was the main channel of the river from 1897 to 1912. Between 1897 and 1912, there were no islands in Albemarle Bend between Newman's towhead and the Mississippi mainland. In Albemarle Bend on the Mississippi shore, between 1897 and 1912, the banks were rapidly caving. (R. 110).

Until the Government commenced to revet there (Albemarle Bend), the caving was so very bad that (the bank) *was almost straight down.* I think the Government began revetting there in the low water of 1910. At the point the Government revetted it would stop caving, but where it was not revetted *it was going in by the acre,* until the day of the cut-off. When the levees began to cave in they moved the line of levee back by looping; another cave would come and they would make another loop.

As soon as the cut-off occurred the current slackened in the bend. (R. 11). (This slackened current caused the old channel to fill).

A towhead is a place that builds up on a sandbar that grows out from the shore and is higher than the sandbar. (R. 123).

Cottonwood and willow usually grow on it, *sometimes hardwood, scrubby stuff;* that depends on conditions.

Where the cabin is on the towhead the bank is some 10 or 12 feet high. Immediately on that bank the soil has been washed away from the edge of the trees. (R. 124).

I first noticed the towhead about 1900, and the timber on it was then 25 to 40 feet high.

The towhead was about as high as the mainland on the Louisiana side and it is now about the same. (R. 125).

Today the highest part of the island is next to the chute and the biggest timber is next to the cut-off.

There is an old field on the northeast corner of the towhead, with a bermuda patch growing there; very little vegetable stuff on it; just this scrub grass. (R. 126).

All these sandbars have bermuda grass on them. There is no poplar; there may be a few ironwood bushes.

Tullos' Island occupied the same position on the map that is now occupied by Newman's Towhead. (R. 126-127).

Tullos' Island disappeared before witness became familiar with this location, which he did in 1897. (The maps show Tullos' Island, in 1823, occupied parts of

Sections 20, 21, 28, 29 and 30, Township 9, Range 8 West).

The Newman Towhead now occupies parts of the original location of Section *15, 16, 17, 20, 21, 28 and 29.* (R. 128).

Newman's Towhead covers, in part, the place once occupied by Tullos' Island. (R. 128).

Testimony of Capt. Chas. H. West.

He is a Civil Engineer and has been for 42 years, and is a member of the Mississippi River Commission, and has been such for nearly seventeen years, or since the 5th of February, 1910, he having been appointed to that position by President Taft. He is a gradudate of the *University of Illinois*, of the class of 1884, and holds the degree in that class of B. S. and C. E., Bachelor of Science and Civil Engineer. He began the practice of engineering immediately after leaving the University, and has been in *continuous* practice ever since.

His first experience, after graduation, was on the Mississippi River, in various subordinate capacities; sometimes in the employ of the United States, sometimes in that of the Mississippi Levee District; and he sometimes did private work until 1892, when he was appointed as subordinate engineer inspector, surveyor and superintendent of construction with the United States Engineers. He was stationed some time after 1882, in Mississippi and Arkansas, *being in the two States continuously until August, 1898, at which time witness was appointed Chief Engineer of the Missis-*

sippi Levee District, which covered the territory in Mississippi opposite to Willow Point in Louisiana. (R. 129-130).

The witness was shown complainant's Exhibit "M", and asked to state what it represented and how it was made. He said this exhibit shows charts *45 and 46* of the Mississippi River Commission, instead of being on two separate sheets they had been put together on one sheet. These are charts of the survey of the Mississippi River Commission's survey of the Mississippi River, *made in 1882, upon which has been projected the township and section lines in Mississippi and Louisiana of the Government land survey in Mississippi in 1823, and in Louisiana in 1824.* The township and section lines are projected vertically upon the Mississippi River Commission map, or chart, of that section of the river. Chart 45 shows Willow Point in Louisiana, and Albemarle Bend opposite in Mississippi. (R. 130-131).

Objection was made by counsel for Mississippi to the introduction of Exhibit "M". Attention was called to the fact that there had been introduced in evidence certified copies of Charts Nos. 45 and 46 of the Mississippi River Commission, of the survey of 1882. That there was also in evidence a certified copy of the Government land survey of Township 19 North, Ranges 13 and 14 East (Louisiana survey of 1824); also a certified copy of the original land survey in Mississippi (made in 1823) of Township 9 North, Ranges 8 and 9 West; that Exhibit "M" merely combined what was shown in the four maps and charts, certified copies of which were already in evidence. (R. 131-132-133).

(The object in preparing Exhibit "M" was to present to the Court the best evidence possible to obtain the relative position of the original Mississippi survey of 1823, and the Louisiana survey of 1824, and likewise to show the changes that had taken place in the river in that locality between the time of the original surveys of 1823 and 1824, and the Mississippi River Commission survey of 1882, by projecting the townships, ranges and section shown on the two original surveys of 1823 and 1824, on the survey of the Mississippi River Commission of 1882, so that the Court could have a bird's-eye view of whole situation).

Objection still being urged, *Capt. West was asked to state how the map (Exhibit "M") was made.* He did this so fully and convincingly in his testimony, *that we merely refer the Court to it. It is shown on* ——. (R. 133 to 136).

WHAT THE EXHIBITS SHOW.

Capt. West further stated that Exhibit "A" is a chart of the Government Survey in Louisiana of 1824 (the earliest made) and showed thereon what is (now) known as Newman's Point, in Louisiana. The Government land survey of 1824 (Exhibit B), as shown on Township Plat of Township 8, Range 13, shows the territory in Louisiana bordering on the Mississippi, *below Newman's Point.*

Exhibit "N" shows Township 9, Range 8 West of the Government land survey of 1823, in Mississippi, and shows the territory on the east side of the Mississippi River, opposite Newman's Point. (R. 137).

Exhibit "BB" shows Hopkins' Island, as surveyed in 1869-1870. It was sectionized as a part of Louisiana, connected with the General Land Survey of Louisiana made in 1824.

Exhibit "C" is a chart of the Mississippi River Commission of the *survey of 1882.* This chart shows the Mississippi River in the vicinity of Newman's Point and Albemarle Bend. (R. 138). This chart shows the Mississippi River as it existed in 1882 in *black lines.*

There has been drawn on this chart in *red lines* the two banks of the Mississippi River, made from a survey of the Mississippi River Commission in 1894. These red lines were superimposed upon the chart of the survey of 1882. *(A new survey was made in 1894, but no new chart; the Commission noting in red lines the survey of 1894, upon the chart of the survey of 1882).* The red broken lines represent the bar at the time of the survey (of 1894), all of which is explained upon the face of the chart.

Exhibit "D" is the same as Exhibit "C", with the addition of the shore and bar lines of the Commission's survey of 1903.

Exhibit "E" is a chart of this reach of the Mississippi River in question made in 1913.

Exhibit "F" is a chart of the Mississippi River in question on a scale of 1 to 20,000 of the Commission's survey of 1913. (R. 138).

Exhibit "G" is a blue print, showing the township, range and section line in Louisiana and Mississippi,

covering the territory in question, of Mississippi in 1823, and of Louisiana in 1824.

Exhibits "H", "I" and "J" were made by witness (C. H. West) to illustrate the position of the river at the time of the *original Government surveys, and the changes* with respect to township and section lines, on the two sides of the river, in the *vicinity in controversy.*

The witness was then asked to give a progressive history of the changes in the Mississippi River, as shown by these maps.

This was objected to by counsel for defendant for the reason that the maps were the best evidence and his statement of what they showed would be merely an opinion. The objection was noted and the witness proceeded. (R. 138-139).

The blue print marked Exhibit "G" shows Willow Point, as defined by the Government surveys of the State of Louisiana in 1824. It also shows, *by broken and dotted lines*, the *outlines of Willow Point*, as shown by a survey made by Louisiana *in 1866.*

The *heavy lines* indicate the shores as they existed at the time of the original Government survey (1824).

(Another line of) broken and dotted lines indicates the mid-river distance, as it existed at *that time.* (1824).

This chart also shows *Tullos Island (in 1824)*, later known as Island No. 98, as being on the Mississippi side of the river, and being a part of Township 9,

Range 8 West, and as occupying parts of Sections *20, 21, 28, 29 and 30 of the above township.*

Exhibit "H" shows the position of the Mississippi River as it existed and as shown in the Mississippi River Commission survey of *1882*. This chart shows the outline of the eastern end of Willow Point, as it existed in 1869-1870, by a broken line, which is further east than the survey of 1866. It also shows the position of Hopkins Island, as it existed in 1870, and its connection with Willow Point, according to the survey which sectionized Hopkins' Island as a part of Louisiana, as shown on Exhibit "BB". (R. 138-139).

This chart shows the Mississippi (River) shore line to be about one mile east of where it was in 1823, and that the part of Tullos Island which lay in Sections 20, 29 and 30, had crept into the river and only that part (of Tullos Island) which lay in Sections 21 and 28 existed at that time (1882).

A channel of the Mississippi River in 1870 passed between Hopkins' Island and the main shore, as shown in the Government survey of Hopkins' Island, marked "BB".

After 1870, the river in the bend northeast of Willow Point began to move southwesterly, and built out the Mississippi shore a distance of 3000 feet, so that in 1882, the Mississippi shore line of the river was along what had been the eastern boundary of Hopkins' Island and the channel of the river, in 1882, was over the position which had been occupied by Hopkins' Island in 1870, having destroyed all but a small part of the southwestern extremity of same. (R. 140).

This was as shown by Mississippi River survey of 1882. Whether all of it (Hopkins' Island) had been destroyed at a slightly previous or slightly later date, there is no history. Witness hardly thought the southwestern extremity was destroyed, as the river from 1882 to 1913 was moving eastward from the southwestern extremity. According to the chart of 1882 it (the part of Hopkins' Island left) was connected with the Louisiana shore. (R. 145).

Exhibit "I" shows the two banks of the Mississippi River, as they existed according to the survey of the Mississippi River Commission made in 1894. This chart shows a very considerable change in the position of the river from that which it occupied in 1882.

The river along the north side of Willow Point having moved southward by caving about one mile, and having extended northeast about one mile.

At this time the Mississippi shore had receded eastward *until* all of Tullos' Island had disappeared and the shore line (of Mississippi) was about 1¼ miles east of the east shore line of Tullos' Island, or where Tullos' Island, or No. 98 had been.

Exhibit "J" is a blue print showing the position of the Mississippi River according to the Mississippi River Commission's survey and charts for 1913.

This chart shows the Mississippi River had caved along the Louisiana shore, on the north side of Willow Point, about 1½ miles.

It also shows that Albemarle Bend (on the Mississippi side of the river) had swung east and north-

east by caving off all of Sections 18, 17, 16, one-half of 8, and all of 9, except a strip on the north part, a part of 10, and the greater part of 15 and 22; about one-fourth of 27, all except a corner of 28, a part of 33, all of 31, and the greater part of 32 had caved into the river, and the Mississippi shore line at that time was about one mile east—in fact, about one mile and a quarter east of the eastern (R. 140-141) boundary formerly occupied by Tullos' Island.

This chart also shows a cut-off across the neck of land between what had been called Newman's Towhead, and the original Willow Point.

This cut-off began during the flood of 1912 and was enlarged during the flood of 1913, so that the greater part of the flow of the Mississippi River went that way (through the cut-off) during that year.

Following the cut-off the upper end of the old bend, known as Albemarle Bend, began to fill up by deposits, and in two or three years it had filled to such an extent that there was no flow around the bend, except during extremely high water.

Since 1913 the cut-off has enlarged *towards the east*, showing a tendency to build out the stub of the bar lying east of Willow Point, and cave away towards the eastward, what is known *as Newman's Towhead* (now on the Mississippi side of the river).

Prior to the cut-off of 1912 and 1913, the channel of the river was around Albemarle Bend, and the caving away of the Mississippi shore *was very rapid. In fact, it had been very rapid from the time of the 1882*

survey by the Commission, up to the time the cut-off was made. It was known as one of the most rapidly caving bends in the lower Mississippi River. (R. 141). Levee lines built in Mississippi to the east of Albemarle Bend would be in jeopardy within two or three years after they were constructed, and one retirement of the levee after another occurred, until it became a burden to raise funds to keep the levee back from the caving banks.

This condition continued until about 1909, when the bend was so long and so deep that to build a new levee would require considerable miles of levee and the cost would be so great that the Levee Board hardly felt able, with the time limits and the revenues to build that levee in one season.

It was evident that it had to be built within twelve months, or the river would get the levee that then existed, and the whole country would be open to the flood during that year.

Capt. West, the witness, had a very complete survey made of the situation in the Mississippi Levee District—that was the last year he was Chief Engineer of that district—in which he showed the probable location of the only feasible levee that could be built, and he prepared a map showing the progressive caving; and that even if the levee was built, the rate of caving that had been going on, if it continued would soon reach that levee and it would be lost.

Witness concluded that the only way to safeguard the country was to revet the Mississippi bank, and prevent further recession by caving. There was no

possible way, no equipment, and no trained forces for that revetment, except such as the Mississippi River Commission had (R. 142), so witness appeared before the Mississippi River Commission and laid before them a chart showing the heavy caving—the rapidity with which it was going on, and the utter impossibility of more than temporizing, and that at a very great cost, unless the bank was revetted and left intact.

The following year, 1910, the Mississippi River Commission sent in several revetment forces, and began revetting the bank at that point along the Mississippi shore. They did not complete the work, but in 1911 they came very near completing what appeared to be necessary.

The 1912 flood came and started the cut-off, a part of the current going through the incipient cut-off and a part around the bend, so some repairs were made in 1912. In 1913 the cut-off widened out until the current went that way, and there was no further attack on the Mississippi banks along the bend and no need for further expenditures on revetments or levees. (R. 142).

After the cut-off, for a while there was a divided flow, but the bulk of the water went the short way, as the slope at the cut-off was much greater, the velocity of the current was much greater.

The accretions began to form around the bend as soon as the current slowed up, but the witness had not gone around Albemarle Bend since 1913, and did not know to which side of the old river most of the accretions attached. (R. 143).

The witness said he could state positively that no part of Tullos Island, as shown in original Government survey, 1824, or as shown in survey of 1882 was left. That the survey of the Mississippi River Commission, of 1913, showed the main shore line to be about 1¼ miles east of the eastern shore line of Tullos Island, as it had existed. As (the river at) this bend (Albemarle) progressively ate away the main shore eastward the accretions on the west side (Louisiana) followed it up continuously, survey after survey. *The river maintained about the same width all the time. The accretions on the convex side formed just as the caving ate away the bank on the concave side.* (R. 143-144).

The first Government survey of Mississippi at point in controversy is that of 1823, shown in Chart "M", and blue print "N".

The next survey is the Government land survey of the Louisiana side, made in 1824, shown on Exhibit "A"; also on "B" and "F".

The next was the survey of the Louisiana shore in 1866. There is no record of any part of that survey except the Louisiana shore line. There is nothing here of that survey, except the line that was platted. (R. 147).

The next survey was in 1869-1870 and is shown on land survey chart marked *Exhibit "BB"; it is also shown on Exhibit "H". This was a survey of what is known as Hopkins Island.*

The next survey is the Mississippi River Commission *survey of 1882. This is shown on Exhibit "C";*

also on Exhibits "D", "E", ("H" and "M"). (R. 147-148).

The chart of the Mississippi River Commission, made from *the land survey of 1882, shows the character of timber on what was left of Tullos Island (at that time). There was some cottonwood, some hackberry and some gum noted on the face of the chart.* (R. 151).

The next general survey was in 1894. (R. 151). The lines of the survey of 1894 were platted on the chart of 1882 in red lines. (R. 152).

Capt. West was asked in regard to the word "accretions" shown on the survey, if it was not merely his opinion. He replied: "No, it is little more than a mere opinion. The chart of 1882 shows accretion beyond the Louisiana bank (R. 156) line of 1866, out for a considerable way. The chart of 1913 shows accretions going even beyond the line of 1894. Therefore, the space between these two periods is covered by the chart on the survey of 1913, *which shows the accretions throughout.*

And again, *there had to be accretions in order for the river to maintain approximately the same width throughout all the period of this moving eastward. The volume of the water carried by the river is such that it adjusts the channel to suit the load of water it has to carry.*

Then my observations of that land have been quite carefully made since 1898. I have been closely observing what the river was doing, as I was responsible all

that period since 1898, for safeguarding against disaster through changes in the river.

Now, prior to 1898, and beginning about 1893, I was along that part of the river several times, and my observation was, during that period *the river maintained about a given width.* Had it been wide and shallow, I should have observed it, and *had it been wide and shallow the caving would have slowed up; but being deep and narrow between the bar lines, and the Mississippi shore, was the cause of the rapid caving throughout, so it is not a mere opinion.* (R. 156-157).

The Mississippi River Commission has no survey (chart) of 1894, only so far as it is shown on the chart of the survey of 1882, in red lines. (R. 157).

The original field notes of the survey of 1894 are in the office of the secretary. He would not give the original notes. They would merely enable you to plat the same lines that he has here. That is the only record that is in shape to be seen, that the secretary has—the plat in red lines on the face of the old chart. That (survey of 1894) was a mere platting on the chart of 1882. They did not go into the question of taking a detailed *topography.* They were only trying to study the change in the river itself.

Comment: This shows there was no topographical survey between 1882 and 1913.

The survey of 1894 was superimposed on the Chart of 1882, and the defendant's witness, Capt. Marshall, fell into the error of applying the elevations and

other topographical data shown by the Survey of 1882 to the Survey of 1894.

Exhibit "I" is a drawing witness got up for the purpose of being annexed to the original bill in this case. The plat merely shows the position of the river with respect to the land lines of 1894. (R. 157-158).

Exhibit "J" shows the position of the Mississippi River, according to the survey of 1913, with respect to the township and section lines on both sides of the river; and it shows the bank line on the Louisiana side, as it existed in 1866, and 1913, and shows the bank lines as they existed after the cut-off had occurred. The position of the river on this chart is the same as the Mississippi River Commission's survey of 1913, as shown on Exhibit "F". (R. 158).

Exhibits "G", "H", "I" and "J" were four blue prints attached to the original bill of complaint, and witness agreed to file the original tracings from which they were made and mark them Exhibits 2, 3, 4 and 5 of his cross-examination. (R. 159).

(These exhibits are to be returned to Capt. West when the case is finished).

(These exhibits were filed with stenographer October 18, 1926). (R. 159).

Exhibit "M" is taken from the survey of 1882. (R. 160).

Chart 17, Exhibits "C" and "D", is shown on Exhibit "N" on a larger scale, and is known by the Government numbers as sheets *Nos. 45 and 46*. (R. 160).

Testimony of Mr. E. T. Purnell.

The witness was born in 1866; is acquainted with the country in the vicinity of Albemarle Bend in Mississippi. (R. 258). In 1867 his father moved to Belleview Plantation owned by Dr. G. W. Kiger. (R. 259-260). They lived on this place from 1867 to 1880. Belleview Plantation is just below Chotard Landing. (R. 260). Witness' father bought 400 acres *above* (opposite) Island 98, and moved there in 1880. (R. 260). Witness' father was William Purnell. His father's place on the Mississippi River, adjoined Maj. Higgins' place on the south. Witness' father's place is spelled on the map (Exhibit "C", Sheet 17, Mississippi River Commission Chart) "Parnell", when it should have been Purnell. This place is on the map as W. Parnell. It lies directly east of *Island No. 98.* The chute between said place and said Island No. 98 was immediately west of his father's place.

The main channel of the (Mississippi) River was west of Island 98. (R. 261).

Witness lived on the *place* from 1880 to 1897, continuously. He had been on Island 98 hundreds of times. It had very heavy timber on it. (R. 262). The timber was virgin growth, Ooak, gum, some four feet through. There were several very large cottonwoods. "One, we knew as the Big Tree 7 or 8 feet through. The big cottonwood tree we measured four feet from the ground. I think it was 37 feet in circumference. There were other trees nearly as large. There is no question whatever that the timber on the island was virgin timber." (R. 262). The main chan-

nel of the river was on the west side of the island—*heaviest against the island*, that is the deepest part of the channel was over next to the island. The channel was never, during his recollection, between the island and the Mississippi shore. (R. 263).

The Vicksburg and Greenville boat used to come up the chute to our landing; but as a regular thing the boats did not run through there. (R. 263). This was during high water; they could not do so in low water. The western side of the island was caving when I first knew it. (R. 263-264). This caving continued. This island entirely caved away. It washed away entirely during the high water of 1894 or 1895. (R. 264). There was not a vestige of it left. (R. 264-265). Up to the complete disappearance of this island the channel was west of the island. (R. 265). There was a towhead over on the Louisiana side opposite the island building up, and as the years went on it grew larger and larger. In high water the boats run between it and the Louisiana shore to make the cut-off. They would do this to keep from going all the way around the bend of the channel.

At all times until 1897 the channel was east of this towhead, towards the Mississippi side. (R. 265).

Mr. R. E. Foster lived at Cotton Wood Plantation, at Shilo Landing, 10 or 12 miles above where I lived. I saw Mr. Foster very seldom. (R. 265-266). He did not visit my section often. (R. 266). As Island 98 was caving away the land opposite on the Louisiana shore extended out each year after each freshet of water, east toward the Mississippi shore. (R. 268).

Witness was on the Newman bar when he was a boy.

When the water was low there was dry land from the towhead to Willow Point. (R. 268).

The low place between Newman's Towhead and the main land (on Louisiana side) where the boats went through in high water, was connected with the main land. My brother walked across there to the Mississippi River one time when I went after him in a skiff. (R. 268-269).

The witness was asked whether the island washed on the north, south or middle, and he answered that it washed all the way down it, until 1894 or 1895—a freshet took it all out. The part in front of Eustatia and Aureton Plantations was the last to wash away. (R. 271).

Witness has a recollection of the island from 1877 or 1878. At this time island extended as far south as the Kiger Plantation.

In 1882 it did not extend as far south as it had when he first knew it. The lower end of the island was cut off considerably. (R. 286).

Witness first knew Hopkins' Island about 1878. The river was then on the Mississippi side of this island, along the east side next to the Mississippi shore; and the river also flowed between Hopkins' Island and the Louisiana shore. (R. 276).

There was a steamboat channel between Hopkins' Island and the main Louisiana shore. (R. 276). Island

98, before the overflows of 1893, '94 or '95, was probably one-half mile long and 200 yards wide. It disappeared suddenly during the high water. (R. 282-283). I saw the trees fall and the last trees on there fell while the water had the land covered. I saw them fall. I was there the next year and the river was flowing over the place where the island had been until the time I left there; no land reappeared where Island 98 had been. (R. 283).

The chute that the witness swam as a boy (the chute that was between Island 98 and the Mississippi shore before Island 98 washed away) was traversed by the Vicksburg and Greenville Packets; the big boats never run through there at all. (R. 283).

We called the Anchor Line Steamboats big boats and the others smaller. (R. 284).

Oraton Plantation was the name of my father's plantation. My stepmother's name was Ora, and he put the "ton" to it and called it Oraton. The place marked "W. Parnell" on the map is the Oraton Plantation. (The stenographer sometimes spelled this name "Aureton" and "Auretion" Plantation). (R. 286).

Island 98 was directly in front or west of this place. (R. 287).

Testimony of Joseph V. De Lahunt.

The witness was 70 years old; is steamboat pilot and captain on Mississippi River from Cairo to New Orleans; had been in Memphis for the last 15 years working for the Government (U. S.) in Second District

as pilot and captain of a steamboat, with headquarters in the U. S. Engineer's Office. (R. 288). Witness went to Vicksburg to live when he was 15 years old (in 1872). Witness was licensed as master and pilot in 1879 or 1880. (R. 288-289). He was pilot first on the Str. Spengler, from Vicksburg to above Greenville (this passed the place involved in this litigation) for about one year. He was then pilot on the Str. Kate Dixon. (R. 289). Vicksburg and Greenville Packet, for about two years; this boat sank at Meyersville in 1882.

Witness was next on the Str. Issaquena, running in same place, until about 1887. (R. 289-290). He was then on the Str. Phil Armour in same trade, for a short time, and then on the Str. Morning Star for about two years, making three trips a week. He was then on the Str. Ruth in same trade for about one year, and then on the Str. Chatahoochie in same trade. (R. 290). The Chatahoochie burned, and witness was then on the Annie Laurie, same trade, making three trips per week; was pilot a while, and then became captain; was on this boat 3 or 4 years. (R. 290-291). He then went on the Str. Bell of the Bend, in same trade, until she was laid up in 1908. (R. 291). All the boats he was on were in the trade between Vicksburg and Greenville.

The Belle of the Bend was laid up in 1904. (R. 291). The boats on which the witness acted as master and pilot during all the time above mentioned passed up and down by Island No. 98, to the west side of same. (R. 292). Not a bit of it was left. The caving caused it to disappear. It started to cave at the head and kept

chipping away, and caved all away. In 1897 I run over the top of the island with a loaded steamboat over the top of the place where Island 98 had been. There were no trees to indicate where the island had been; they went to China I reckon. (R. 292). Before Island 98 caved away the channel ran west of it, and east of Hopkins' Island. (R. 293). Island 98 went away slow. Just kept chipping off. The caving occurred on the outside, the west side. As Island 98 chipped away, it filled up on the Louisiana side. During the progress of the caving you could not land at the island. I never landed there in my life, because of the snags and trees—it was dangerous. (R. 293-294). The *big timber on Island 98* caved into the river. In 1897 or 1898 there was nothing left of the island; it had entirely disappeared. Witness passed there 6 times a week. (3 trips—1 down and 1 up).

Between Island 98 and the Mississippi shore, there was no channel at any time. (R. 294). When witness first knew Island 98, it was 1½ miles long, something like that. (R. 298). There was no channel west of Hopkins' Island. The channel run between Hopkins' Island and Island 98 when I first knew it. (R. 299). The only islands I knew of were Hopkins' Towhead and Island 98. (R. 299). Hopkins' Towhead was west of Island 98. Hopkins' Island did not wash away altogether while I was there, which was until 1908. (R. 299-300).

Comment: The island witness refers to as Hopkins' Island or Towhead, is evidently the same as is generally called Newman's Towhead.

COMMENT ON THE TESTIMONY OF DEFENDANT'S WITNESSES.

Capt. H. M. Marshall, for defendant.

Defendant's counsel presented to witness what is marked as Deft. Exhibit 1, which is complainant's Exhibit "A," and defendant Exhibit 2, township plat in Mississippi, and the witness said:

> "The bank line in Louisiana, as shown on the Mississippi township plat, is not the same as the bank line in Louisiana, shown on the township plat of Louisiana."

In other words, the river is not the same as shown on the two maps. (R. 170).

> "It is not a fact that the land on the Mississippi side opposite Willow Point in Louisiana gradually wore away by erosion, while the shore opposite at Willow Point gradually extended eastward by accretion, *until it extended to a distance of approximately 5 miles.*" (R. 170-171).

Comment: If the witness *merely* meant by this statement, that the Louisiana shore had not extended approximately 5 miles by accretion, there might be some foundation for the testimony, as the extension was more northeastward than eastward, and the extension may not have been as much as five miles; but if the witness intended for the Court to believe from his testimony that the Mississippi shore line did not wear away by erosion, and the Louisiana shore line at Willow Point did not gradually extend eastwardly or

northeastwardly by accretion, then his testimony is without foundation, and is contradicted not only by the witnesses who testified from personal knowledge, but by the United States surveys of 1823 and 1824; and the Mississippi River Commission surveys of 1882 and 1894, introduced in evidence herein.

Referring to three sheets being Exhibits 4 "A," "B" and "C," blue prints of surveys of the Mississippi River Commission, the witness said:

> "On these three sheets the shore line of 1882 is marked along the western limits or western edge of Tullos Island. On the Louisiana side the bar line of 1882 is marked. *To the east of this island is shown the channel of the Mississippi River at the time the survey was made in 1894.* (R. 171-172).

The fact that the island elevation is over 100, which is about the elevation of the bank line of the Mississippi shore, the location of the channel of the Mississippi River east of the high land shows that the river had gone around the upper end of the island, and *was flowing to the east of the island.* (R. 172).

And this shows that the island could not have washed away. (R. 173).

Comment: This testimony is without foundation. The surveys of the Mississippi River Commission need only be examined to show its fallacy.

The witness gives as a reason why the island could not have caved away that the charts show that the

elevation of the island *is* over 100, which is about the elevation of the bank line on the Mississippi shore.

Capt. West's testimony (R. 149) shows that the survey of the Mississippi River Commission of 1882, shows the elevations of the banks of the river on both shores, for about 1 mile back from the river; while on (R. 151), he further points out that the survey of 1894 *did not show the topography. It only took in the change in the position of the river alone*, and that survey was platted on the charts of *the 1882 survey.* (In other words, there was no new chart made of the survey of 1894).

To show the inaccuracy of this statement of the witness, Capt. Marshall, it is only necessary to examine chart of the Mississippi River Commission, Sheet 17, showing first the survey of 1882, in black lines; Island 98 being east of the channel. This same chart shows the survey of 1894, superimposed on said chart in red lines. The red solid lines showing the Louisiana shore line and the Mississippi shore line and the red broken lines showing the bar lines on each side of the river. In 1882, there was only a small chute east of Island 98. While in 1894, the Louisiana bar line had extended in a direction a little north of east from Willow Point, until it reached what was the Mississippi shore line of 1882, just below Duvall's Landing, and between Ingomar and Albemarle Plantations; that this Louisiana bar line extended over a part of what had been in 1882, Albemarle Plantation in the State of Mississippi, and crossed the chute between said plantation and what had been Island 98, in 1882. The commission's survey of 1882 shows that a part of Tul-

los Island, or Island 98, still existed at that time. The elevation could well show 100 on that survey, while the survey of 1894 shows that Island 98 had entirely disappeared at that time.

The survey of 1894 was, as stated, superimposed on the chart of 1882, hence, the elevations on this chart refer solely to the elevations as they existed in 1882, and not to the time of the survey of 1894, or the elevation of that year, as none were taken in the survey of 1894. That, in 1894, all of Tullos' Island had washed away, hence, the elevation of Tullos' Island, which did not exist in 1894, was not shown to be, and could not have been, 100.

Another inaccuracy of this testimony is that the channel of the river flowed east of Tullos' Island in 1894. The survey of the Mississippi River Commission of 1894 showed that the bar line of Louisiana extended over a small part of the northwest corner of where said Island 98 had been, and that what had been the location of said island was then the channel of the river; hence, the channel could not be flowing east of said island.

This witness further states on page of R. 173, that "the fact that the island elevation shows a reading of 110 feet, and the water survey on the shore line shows a reading of 60 feet, is absolute proof of the fact that the island was 50 feet above the water surface at the time of the survey, with trees growing on top of it." While this may have been true at the time the survey was made in 1882, it was not true at the time of the survey in 1894, as the island is shown by that survey

to have disappeared, and a small part of the place it formerly occupied to have been covered by a sandbar, which made out from Willow Point, in Louisiana, and the balance of the place it formerly occupied was in the channel of the river.

On R. 173, it is shown *he had not seen the Island since 1890.*

Comment: Hence, his whole testimony that it had not disappeared results from deductions made from the surveys of the Mississippi River Commission of 1882 and 1894, and what he saw in 1890.

On R. 174, the witness says:

> "Of course everybody knows that an Island cannot be washed away and then four years later be built back with big trees growing on it, *as shown by the survey.*"

Comment: The witness had just stated he saw Island 98 in 1890, and is now assuming that the survey of 1894, four years later, showed the same island with trees growing on it. The witness was evidently ignorant of what the survey of 1894 showed, and had assumed that the survey of 1894, like the survey of 1882 showed the topography and elevation, when it did nothing of the kind, but showed only the changes in the position of the river alone. (R. 149-151).

The witness says the ground west of the island is 20 feet lower than the island, and that this low ground west of the island was the location of the river in 1882, which shows that the Mississippi River had gone around the head of the island and over to the east,

and a bar had formed from the Louisiana side, over to the head of the island. If this island had washed away, and accretions had made from the Louisiana shore, this low ground *could not have occurred*, if the Mississippi River had gradually moved over toward the State of Mississippi building an accretion on the Louisiana shore. * * * *That accretion would have been higher adjacent to the Louisiana shore and lower as the accretions were formed from year to year, toward the* Mississippi shore. (R. 174).

Comment: This whole statement is not based on any fact, and is merely a theory of the witness, and his theory is shown, by eye witnesses and the surveys, not to be correct.

Capt. George Prince said that trees grew out on Willow Point Bar, and where the trees grew the land built up higher; *higher than the* mainland, and that the point where this bar got higher *was called Newman's Towhead;* that a towhead is a kind of middle ground in a river; a small island that trees and bushes grow on; that the river was toward the Mississippi side of the towhead. (R. 26-27).

The evidence shows that the trees on this towhead in 1900 were 8 or 10 inches in diameter. (R. 29).

Capt. Prince further said a towhead was a *high place on a sandbar*, where willows and trees grew, generally connected with the main shore. (R. 32).

Mr. Ernest Newman said the Newman Towhead was at Willow Point Bar as far back as he could recollect (1879). That you could go from the main Louisi-

ana shore to Newman's Towhead; that the channel was east of the towhead, until after the cut-off in 1912. (R. 52).

Mr. Newman said he kept their cattle on Newman's Towhead. The water in 1897 was high, *and came through the depression* where the channel afterwards came through. (R. 63).

(This was the depression between Newman's Towhead and the mainland).

Mr. George R. Newman said, in speaking of Willow Point Bar:

> "There was a depression that had no timber on it; that was very narrow." (R. 68).

(This shows that the bar became higher further out from the main shore, where the timber again grew).

Mr. I. B. Beard said, referring to Willow Point Bar:

> "The main bar was already there, and the towhead (referring to Newman's Towhead) * * * he did not know how much a year, but each year it got higher and higher." (R. 188).

Capt. Reed, speaking of Willow Point Bar, said a Towhead appeared on the white sandbar. (R. 99-100).

It was close to the Louisiana shore. (R. 100).

The Towhead *continued to grow in height and size.* (R. 100).

The second towhead was about 150 yards from the timber line on the bank, *with a depression between it and the bank.* (R. 115-116).

In extremely high water some small boats navigated that depression. (R. 107).

Comment: This demonstrates the inaccuracy of the theory of the witness that were the land in question accretions to the Louisiana shore, said depression could not have existed.

We think the Court would take judicial cognizance of the fact of the existence of towheads; they are usually at the outer and upper extremities of sandbars, and *there is a depression* between the Towhead and the other part of the bar. These towheads are formed on the convex, or bar side of the river. The reason of the formation of these towheads would seem to be about as follows:

On the convex, or bar side of the river, there are often eddies, where the current runs up stream, and at the upper end of the eddy, where it comes in contact with the down current for a certain distance, there is no current, or it is very slack. Where the current slackens most, on a silt bearing river like the Mississippi, the silt deposits are greater and raise the bar higher and faster than in other parts. After it is above the water, being higher, trees appear quicker, and they, in turn, check the current and cause the silt to deposit, during highwaters. In periods of no water, the wind blowing the sand against the trees will continue to raise the Towhead higher, in the same manner as obstructions cause snow to pile up.

Where a bar begins to form against the bank, the fact that in its formation it should raise more rapidly, out a little from the bank, would not prevent it from being accretion. But if such were true, it would be entirely immaterial in this case, as an island appearing on one side of the channel of the stream belongs to the State on that side of the stream. Therefore, the testimony of Capt. Marshall on this point cannot in any way affect the case of complainant, as the testimony conclusively shows that there is often a depression between the outer edge of the bar and the mainland.

Capt. Marshall, for the defendant, further stated that he was at Island 98 in the *high water* of 1890. That the mail boat came up the chute (between the Island and the Mississippi shore) and put off mail for Jack Chilton. While the mail boat was passing through the chute an Anchor Line boat passed down the *main channel* on the western side of both islands. There were two islands with a chute, *through which there was a swift current*, running between the two, and there were trees growing on both islands. There was a channel east of both islands. *Without being able to say how wide it was, it was possibly 100 feet wide.* (1890). (R. 175).

(N. B. The stenographer skipped from page 261 to 270 of the original evidence). (R. 174).

This statement is no doubt entirely true but it has nothing to do with the condition existing at the time of the 1894 survey, four years later, except that the swift current passing through the chute between Island 98 and the island to the west and a little above, and overlapping a little at the upper end, would indicate that

this swift current would likely wash away the lower island, or Island 98. The position, as above, of the other island in 1890, is shown in (R. 171).

On R. 177, Mr. Marshall stated that the surveys of 1894 showed bar lines, timber lines, high ground, low ground (but) nothing was said about accretions.

Comment: If the map showed the extension of the bar line, it necessarily showed the accretions, as the extension of the bar attached to the bank, can only be produced by accretions.

The witness further said on the same page (R. 178) *that the survey of 1894* of the Mississippi River Commission *showed Tullos' Island on said map.*

Comment: The error of the witness in this regard has heretofore been explained. He evidently did not know that no new chart was made from the survey of 1894, but that this survey was superimposed on the Chart of 1882. (R. 149-151-152).

All of the testimony of Mr. Marshall showing topography, elevations, etc., in 1894, is based on the error which arose from his using the chart of the survey of 1882.

On R. 175, Mr. Marshall estimated that the chute was 100 feet wide.

On R. 181, Mr. Marshall said that this chute, which was formerly on the eastern side of Island 98, was within the bed of the river in 1896. (He shows, on same page, he meant 1894).

Comment: Now if the 100 feet wide chute was in the bed of the river at the time of the survey of 1894 is it not reasonable to conclude that Island 98 was also in the bed of the river?

By referring to the survey of 1894, it is shown that where a little part of the NW¼ of Island 98 had been in 1882 was then the bar line of the edge of the water on the Louisiana side, and for the bar line of the Louisiana side to have occupied this position, that part of the Island 98 *necessarily* disappeared. This survey further showed that the balance of the position occupied by said Island in 1882 was in the bed of the river in 1894.

Capt. West, the Civil Engineer, and member of the Mississippi River Commission, so interpreted the survey of 1894, while Capt. Marshall is attempting to make a different interpretation of the same chart, which was prepared by the Mississippi River Commission, of which Capt. West is a member, being the civilian engineer thereon.

On R. 181, Capt. Marshall further said this survey of 1894 showed Island 98 on the western side of the channel. Complainant answers this by referring to the survey of 1894, which shows on its face that Capt. Marshall is in error in this regard.

This witness had not seen Island 98 since 1890, and could not know personally whether it caved away.

Certainly these deductions of Capt. Marshall, based on the errors of fact, and ignorance of what the survey of 1894 showed, cannot overthrow the testi-

mony of the eye witnesses to the fact that Island 98 entirely disappeared, especially when such testimony is shown to be true by the survey of the Mississippi River Commission of 1894.

C. F. Hume, for defendant, said he went to Chotard in October, 1896. (R. 191).

That he was familiar with Tullos' Island, or Island 98. The river was eating in on the Mississippi side. The upper part of that land (island) at that time was west from Chotard Landing, across the channel of the river. The river was east of this island. *At that time we called it* a bar. (R. 191).

Comment: It is patent that this witness is speaking of Newman's Towhead, as he said they called it a bar, *which was across the river in 1896*, from Chotard Landing (in Mississippi). It could not have been Tullos' Island, or Island 98, as that had disappeared. The witness said, the more it would cave here (Chotard Landing) the more it (the bar across the river) would build *north and east* from the lower part. There was nothing but the river across from the island. When the water was high, it was an island *then, all right enough.* When the water was high, I have known a boat to go on the west side of the island. (R. 192).

Had Mr. Hume been a witness for complainant he could not have described Newman's Towhead more accurately. The timber on this island was principally *cottonwood* and *willow.* Comment: Had this been Tullos' Island there would have been other kinds of timber thereon. He thought some was 3 feet in diame-

ter. He thought the trees were 40 or 50 years old. (R. 192-193).

(Comment: On Newman's Towhead 50 years before the date of this testimony in 1926, this willow was 3 to 5 feet high. R. 88-89).

He had not the remotest idea of the acreage in the island. He judged the island to be 4 or 5 miles from Henderson's up to Newman's Point, or about there, where it struck the river, and around the current 12 or 15, possibly 16 miles. Where the big timber grew it was higher, he thought 20, 25 or maybe 30 feet. He was there until 1907, and this island built all the time—growing larger. (This was exactly what Newman's Towhead did). (R. 194).

The island was building northeast every year while he was there (1896 to 1907). (R. 196).

Witness guessed that was Island 98, *if you count the bar an island.* It was caving on the Mississippi bank. (R. 197). *The island did not cave any that witness knew of.* (R. 197). He went over to the island from 2 to 40 or 50 times a year. *Mr. Purnell sometimes went with him.* He was keeping store for Mr. Purnell. (R. 197). Mr. Purnell's testimony shows this was Newman's Towhead. (R. 265).

Witness was on this island a year ago, and the island there now is the one he referred to. When he went there in 1896 the channel was between the Mississippi shore and the island. The Anchor Line Steamers were running between the island and the Mississippi shore. During high water boats could go west of the islands. (R. 198).

He was on the island from 2 to 40 or 50 times a year, and if there was any other timber on it than cottonwood and willow, he did not know it. (R. 199). The big timber *was back a half mile from the water's edge*, and practically straight across the river from Chotard Landing. (R. 201).

Comment: Had this been Tullos' Island the big timber would not have been a half mile back from the water.

Witness never knew whether it was a part of Willow Point, or Newman's Towhead, or not. (R. 201). Witness further said you could go from the island to the Louisiana shore in low water, at all times between 18[illegible] and 1907; and the island was making out northeast during all that time, and there was just a depression between this island and the Louisiana shore that steamboats could go through in high water. (R. 205).

During the time this bar was getting larger the shore on the Mississippi side was caving. In 1896 this island was more than 6 miles long and making toward Mississippi. (R. 205).

Witness said he did not know, *of his own knowledge, whether the island he referred to was the original Island 98, or not.* It was connected with the Louisiana shore. (R. 206-207).

This witness has, no doubt, truthfully stated the conditions as he saw them; and the physical conditions were pretty much as he stated them. *He did not know whether the land he spoke of was Tullos' Island*, or Island 98, or not. He knew nothing about it before

1896, a time when the evidence of the eye-witnesses, and the survey of the Commission in 1894, showed that Island 98 had disappeared. The fact that he heard what was doubtless Newman's Towhead called Island 98, could not overthrow the testimony, above recited, of complainant.

This witness described Newman's Towhead perfectly, and with all the evidence in the record of eye-witnesses, and people who knew that Island 98 had entirely disappeared, also shown by the survey of 1894, conclusively shows that the island described by him was Newman's Towhead.

Witness said he hunted on the island with Mr. Purnell, and the Newmans who owned the Towhead testified that Mr. Purnell hunted over there on Newman's Towhead.

That would leave a clear river from Chotard Landing in Mississippi to Newman's Towhead in Louisiana, *just as described by this witness.* Assuming the island the witness speaks about to be Newman's Towhead, his testimony fits that of the complainant like a glove fits the hand.

Mr. R. E. Foster, for defendant, said he knew Island 98. (R. 208-209). He had three places on the river in Mississippi, and the island was in sight of the lower place. He said the island never all washed away. *If it did, he did not see it.* That the main part was there now.

Between 1882 and 1912 the Mississippi shore caved rapidly. (R. 210). He could see the island from

in Albemarle Bend, where the revetment was done on the concave side of the river, and Newman's Towhead was on the convex side, is it reasonable that Newman's Towhead would have washed away prior to 1912? If it did not wash away prior to 1912, it did not afterwards, as the land just east of the present river is a part of the land in controversy, and this being Louisiana territory it necessarily follows that all west of the present river is also Louisiana territory. It could not have washed away since 1912 and have reformed and have grown cottonwood the size of the trees thereon; besides, there is no such contention.

If the river maintained about the same width of three-fourths of a mile, and there were no islands in the river at this point, after 1897, until after the cut-off of 1912, would not Island 98 necessarily have disappeared?

Complainant contends the evidence is conclusive that no island existed at this point between 1897 and 1912, and that Newman's Towhead, Louisiana territory, was left east of the channel by the avulsion of 1912.

In conclusion, complainant contends that it has established that the boundary between the States of Louisiana and Mississippi at the point in controversy, as shown by the record, is the old channel of the Mississippi River, which was abandoned as a result of the avulsion of 1912, and that the boundary in said old channel was changed eastwardly by accretion to New-

man's Towhead, after the avulsion, as long as the water continuously flowed through said abandoned channel.

Complainant prays that your Honors so hold, and that you appoint a Commission to ascertain and mark the said boundary line.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1928.

No. [redacted] 6, ORIGINAL

IN EQUITY.

THE STATE OF LOUISIANA, COMPLAINANT,

versus

THE STATE OF MISSISSIPPI, DEFENDANT.

SUPPLEMENTAL BRIEF OF STATE OF LOUISIANA, COMPLAINANT.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 9, ORIGINAL.

IN EQUITY.

THE STATE OF LOUISIANA, COMPLAINANT,

versus

THE STATE OF MISSISSIPPI, DEFENDANT.

SUPPLEMENTAL BRIEF.

To the Chief Justice and to the Associate Justices of the Supreme Court of the United States:

This supplemental brief is filed to answer the two defenses set up by defendant in its brief which we did not receive until the 15th of September, 1928, and then only in typewritten carbon copy.

Complainant's Contention

is that the original boundary line between the States of Louisiana and Mississippi, in East Carroll Parish, La., and the point in the State of Mississippi, known as Albemarle Bend, was the Mississippi River, as shown by the earliest Government land survey in Mississippi of 1823 and in Louisiana of 1824. That at this place Willow Point Plantation was on the Louisiana side and Albermarle Bend was on the Mississippi side of the river, Louisiana being on the convex side of the bank and Mississippi on the concave side. That subsequently to said surveys, the Louisiana shore gradually and continuously extended by accretion in an easterly and afterwards in a northeasterly direction toward the Mississippi shore, which receded by erosion, cutting away its banks, the Louisiana shore progressively following the recession of the Mississippi shore. That this condition continued until all of Tullos Island, or Island 98, originally in Mississippi in Albemarle Bend, and all other contiguous islands or sandbars on the Mississippi side of the river had disappeared, being washed away by the river, until the Louisiana shore had built by accretion over the location formerly occupied by Tullos Island as well as over what had formerly been other Mississippi property. That this condition continued until 1912 and 1913, when an avulsion of the Mississippi River took place through Willow Point, being Newman's bar, leaving considerable of the said bar and Newman's

Towhead on the Mississippi side of the river. That Willow Point property, prior to 1876, belonged to Walter R. Newman. That on the outer edge of the Willow Point bar a towhead built up. This towhead was called Newman's Towhead, and was connected with the said bar. That this towhead continued to grow in size and height and extended by accretion, together with the balance of Willow Point bar, gradually and continuously toward the State of Mississippi until the said avulsion of 1912-1913.

That all of the property in dispute, including Newman's Towhead, was Louisiana territory prior to the avulsion of 1912-1913, and remained so thereafter, and is now Louisiana property, the towhead being a high point on the sand bar.

That what ~~plaintiff~~ defendant claims is Tullos Island, or Island 98, or some other island that was Mississippi territory, is in fact Newman's Towhead, which covers a large part of the same position once occupied by Tullos Island and other territory formerly of Mississippi.

While the above is the main contention of complainant, it contends that it is immaterial whether the original soil now constituting Newman's Towhead or bar was made to the Louisiana bank by accretions or formed in the Mississippi River, as a towhead or island, provided that said formation was west of the channel of the Mississippi River, as in such event it would be Louisiana territory, just as accretions would be, and all accretions that might thereafter attach to said island or towhead would likewise be Louisiana territory.

That Louisiana had absolute and sole dominion over the property in controversy until after the avulsion in 1912-1913, and has never recognized any right thereto in the State of Mississippi.

In Defendant's Statement of Facts (Brief, page 2) it is set forth that "the territory in dispute was originally surveyed as a part of Mississippi and is described as a part of Sections 9, 10, 15, 16, and 17, all of Sections 20 and 21, and a part of Sections 22, 28, 29, and 30, all in T. 9 N., R. 6 W., Choctaw District, as shown by the United States Governmental Survey of 1823."

Whilst the land now in dispute may occupy the position occupied by lands above described as surveyed in 1823, this is a mere incident to the controversy before the court; for the claim of complainant, State of Louisiana, is not made with reference to land as described by Section, Township and Range, but is a claim to all lands which by accretion formed in the Mississippi River and attached to the Louisiana shore at the point described in the bill of complaint and which accretion gradually extended in a general easterly direction as the Mississippi River receded and as said accretion existed at the time of the cut-off of 1912-1913—the boundary line between the States of Louisiana and Mississippi thereupon becoming fixed in the center of the thalweg, or channel, which at the time of said avulsion lay between said accretions to the original soil of Louisiana and the Mississippi mainland of 1912-1913.

Defendant's Statement of Facts (Brief, page 2), referring to the United States Governmental Survey of 1823, correctly states "when this survey was made Fractional Section 20, Lots 2, 3, 4, and 5 of Section 21, Lots 3 and 4 of Section 28, all of Section 29, and Fractional Section 30 composed what was known as Tullos Island, later as Island 98." This is a correct statement as to what composed Tullos Island and is correctly shown on Defendant's Exhibit No. 2 to the testimony of defendant's witness, Horace Marshall. These sections embraced the whole of Tullos Island, or Island 98. Said Tullos Island, or Island 98, as shown by reference to said exhibit, lay entirely south of the south line of Sections 16, 17, and 18, of T. 9, R. 8 W., Choctaw District, in the State of Mississippi, and was separated from said line by a chute designated on said land survey and also designated on said Mississippi River Sheet No. 17; said Island 98, or Tullos Island, thus limited and defined, being bounded on the westerly side by the main channel of the Mississippi River and being bounded north, east, and south by said chute roughly in the shape of an elongated horseshoe.

Defendant's Contention.

Defendant bases its defense on two propositions:

FIRST.

That complainant has failed to prove that the Mississippi River gradually moved eastward from its

1823 channel to the 1882 channel, and that the Louisiana shore line progressively followed it by accretion.

That if this is true, any accretions that attached to the west shore subsequent to the year 1882 wholly fails to prove that such accretions become attached to territory belonging to the State of Louisana, and in such event complainant's claim must be rejected; that the burden of proof is on complainant.

Complainant denies this contention of defendant.

Complainant's answer to this is that it has proved that said accretions attached to the Louisiana shore; but that if it has failed to make such proof, this would be immaterial, provided complainant has shown that such accretions attached to a towhead, or island, which had formed in the river west of the channel.

That if the testimony shows that Newman's Towhead existed, and that it formed west of the channel, though not attached to the bank, then all accretions thereto were Louisiana property at the time formed, was Louisiana property in 1882 and in 1913, at the time of the avulsion, and is now Louisiana property. That one or the other of complainant's contentions has been established and the court must render judgment in favor of complainant.

SECOND.

That if complainant has established that the accretions originally attached to the Louisiana bank, and that said shore line has been progressively added thereto by accretion until 1882, that complainant must

fail, because *defendant's proof tends to show that* subsequent to the year 1882 the Mississippi River above and to the *west of Willow Point* cut into the Louisiana shore deflecting the current from a *southeasterly* direction to a *northeasterly* direction; that because of this deflection in its course, the river cut around the head of and to the north and east of what was left of Tullos Island at some time prior to 1894, scouring out the old chute between the island and the Mississippi shore, and making a new channel there; *that the old bed of the river filled up, so that Tullos Island became attached to the Louisiana shore;* that the river continued to cave the Mississippi shore, adding to the island by accretion until the year 1912 or 1913, when it suddenly abandoned *its new channel* and went back to the old 1882 channel, leaving Tullos Island again, and in truth, an island, but greatly enlarged by the accretions added thereto. That Tullos Island was divided into two parts. Upper and lower. The evidence fails to show such, but on the contrary only shows that one Tullos Island ever existed.

Defendant also contends that the burden of proof is on complainant to negative this contention of defendant.

Complainant also denies this second contention of defendant.

This contention of defendant is disputed by complainant, it contending that Tullos Island, or Island 98, was washed away by the river in 1894, or prior thereto, and that not a vestige of it left; that this has

been established by the evidence, and this second contention of defendant must fail.

Answering Defendant's First Contention.

That complainant has failed to prove that the Mississippi River gradually moved eastward from its 1823 (1824) channel to the channel of 1882, and that the Louisiana shore line progressively followed it by accretion.

Complainant denies that it has failed to make such proof, but contends that this fact has been clearly established by a preponderance of the evidence.

This is shown by surveys made in the following years: 1824, 1866, 1870, 1882. The survey of 1894 shows a continuation of the accretions to the Louisiana shore.

There is no dispute as to the Louisiana bank line shown on the original survey of 1824. There is no dispute that the Louisiana bank line never extended west of the line of 1824.

Complainant introduced in evidence on the trial, *without objection*, four blue prints, made from drawings of Capt. Chas. H. West, Consulting Engineer, Greenville, Miss. (R., 129).

Captain West is a member of the Mississippi River Commission. The blue prints are marked Exhibits G, H, I, and J.

Each of these exhibits has the Louisiana "*1866 bank line*" plainly marked thereon.

As early as 1866 there had been some caving on the north of Willow Point, and no addition had been made

to Sections 1, 2, and 3 of this property; in fact, they had caved some, which will be discussed later.

The accessions to the Louisiana bank line began near the upper section line of Section 4, and extended down the river to about the middle of Section 8, where said section reached the river.

The extensions of the Louisiana bank line from 1824 to 1882, as shown by the various surveys at points of greatest extension, are as follows, to wit:

Between 1824 and 1866, 439 yards, or two-eighths of a mile.

Between 1866 and 1870, 1,099 yards, or five-eighths of a mile.

Between 1870 and 1882, 1,245 yards, or six-eighths of a mile.

These progressive extensions are shown on the following table:

Table Showing Successive Accretion to Louisiana.

Taken from Complainant's Exhibit "G."

This tabulation covers the fan-shaped township 19 N. R. 14 E., in East Carroll Parish, La., and includes what is known as Willow Point. It is composed of sections 1 to 9. It begins by showing in inches the length of the upper and lower side of each section line of said sections 4 to 9 at the time of the original government land survey of Louisiana in 1824, each of said sections beginning at a common point on the range line dividing ranges 13 and 14, all of said section being in range 14.

It then shows the distance in inches from said common point of said sections, lines beginning with the lower line of section 4, and to and including section 9, as shown by the survey of 1866, and then shows the difference in inches of said section lines between 1824 and 1866, and then shows the said difference in yards, so that it may be determined at a glance the number of yards the shore line had extended between 1824 and 1866.

Similar facts are also shown as to the surveys of 1870 and 1882, the object being to show the gradual and continuous advance, by accretion of the Louisiana shore line toward the Mississippi shore line.

Plaintiff's Exhibit "G" is on a scale of 1 to 20,000, which is to say 3⅛ inches to 1 mile. We used, to avoid fractions, 3 inches to 1 mile, which does not materially change the result.

Table Showing Yards in from ⅛ of an Inch to 1 Inch, One Inch Being 586 Yards.

Inch		Yards
1/8	=	73
2/8	=	146
3/8	=	220
4/8	=	293
5/8	=	366
6/8	=	440
7/8	=	513
8/8	=	586

Sections	Length of upper and lower section lines Sections 1 to 9	Inches in 1824	Inches in 1866	Difference in inches between 1824 and 1866	Difference in yards between 1824 and 1866	Inches in 1870	Difference in inches between 1866 and 1870	Difference in yards between 1866 and 1870	Inches in 1882	Difference in inches between 1870 and 1882	Difference in yards between 1870 and 1882
1	Upper	.....	.....	...	...	.....	.....	....	.....	.....	....
1	Lower	.....	.....	...	...	.....	.....	....	.....	.....	....
2	Upper	.....	.....	...	...	.....	.....	....	.....	.....	....
2	Lower	.....	.....	...	...	.....	.....	....	.....	.....	....
3	Upper	.....	.....	...	...	.....	.....	....	.....	.....	....
3	Lower	.....	.....	...	...	.....	.....	....	.....	.....	....
4	Upper	.....	.....	...	...	.....	.....	....	.....	.....	....
4	Lower	4 5/8	5	+ 3/8	220	5	00	00	5 1/8	+ 1/8	73
5	Upper	4 5/8	5	+ 3/8	220	5	00	00	5 1/8	+ 1/8	73
5	Lower	4	4 5/8	+ 5/8	366	5 1/8	+ 4/8	293	6	+ 7/8	513
6	Upper	4	4 5/8	+ 5/8	366	5 1/8	+ 4/8	293	6	+ 7/8	513
6	Lower	3 3/8	4 1/8	+ 6/8	439	5 3/8	+ 1 2/8	732	7 4/8	+ 2 1/8	1245
7	Upper	3 3/8	4 1/8	+ 6/8	439	5 3/8	+ 1 2/8	732	7 4/8	+ 2 1/8	1245
7	Lower	3 1/8	3 3/8	+ 2/8	146	5 2/8	+ 1 7/8	1099	6 2/8	+ 1	586
8	Upper	3 1/8	3 3/8	+ 2/8	146	5 2/8	+ 1 7/8	1099	6 2/8	+ 1	586
8	Lower	3 4/8	3 4/8	...	...	.....	.....	....	5 2/8	.....	....
9	Upper	3 4/8	3 4/8	...	...	.....	.....	....	5 2/8	.....	....
9	Lower	5 2/8	5 2/8	...	...	.....	.....	....	.....	.....	....

This table demonstrates the impossibility that an avulsion could have occurred at this point in the river, between the States of Louisiana and Mississippi, between the years 1824 and 1882, for the following reasons:

The river never traveled west. East of Willow Point the original sections are still there.

The evidence of complainant shows that the river at this point was at all times approximately the same width (R., 144, 155, 156, 157).

Defendant in its brief, on page —, adopts as true the contention of complainant that the river at this point maintained its width, Mr. Marshall admitted same (R., 181).

Assuming that the surveys show it to have been about two-thirds of a mile, that would be, say, 1,200 yards wide at this point. It was narrow and deep (R., 157).

The 1866 survey shows that from 1824 to 1866 the river had only extended eastward at Willow Point, at the place of the greatest extension, which was the lower line of Section 6, 439 yards, or one-fourth of a mile. Island 98, or Tullos Island, then opposite the point, was a distance, say, of 1,100 yards from the Louisiana shore. Captain Reed thought across from the Tennessee Bar was three-quarters of a mile (R., 118-119).

As the river, until 1866, had only extended eastwardly 439 yards, from the acknowledged bank line of Louisiana, of 1824, for there to have been an avulsion, subsequent to 1824 and prior to 1866, through

Mississippi territory, the river must have extended eastwardly at this point, more than its width, or more than 1,100 yards; but as it had only extended east one-fourth of a mile it is an impossibility for there to have been an avulsion at this point prior to 1866.

It necessarily follows that the Louisiana bank line of 1866 was Louisiana territory.

From 1866 to 1870, as shown by the surveys and the above table, the river at this point had only extended, in its widest place, 1,099 yards, and this being less than the width of the river, it is a physical impossibility, during said period, for there to have been an avulsion in the river at this point through Mississippi territory. An island would not form *east* of the center of the river and *west* of the channel toward the concave bank. Had such island formed, as the channel moved east the river would have wiped it out and passed over such island.

Therefore the accessions to the Louisiana bank line up to 1870 would necessarily be Louisiana territory.

From 1870 to 1882, as shown by the surveys and the above table, the river at this point had only extended in its widest place 1,245 yards, or only about 145 yards more than the width of the river, even if in fact it was more than the width of the river at all. If between these dates there had been an avulsion in the Mississippi River at this point through Mississippi territory the strip left of Mississippi territory could not have been more than 145 yards between the two channels, even if the accretions had stopped on the Louisiana side as the Mississippi shore receded.

Complainant assumes that such an avulsion as the defendant suggests could not have happened, and never did happen in the history of the river.

Mississippi could not have acquired territory here through the formation of an island for reasons just given in regard to the period from 1866 to 1870.

Even if such could happen, the evidence makes it clear it did not happen in this case.

The evidence of all the witnesses and the surveys show that the caving was much more rapid after 1882 than before, and it would follow that from 1870 until 1882 the change was gradual, and as the Mississippi shore receded the Louisiana shore advanced, and as the river between those periods did not move further east than shown on the table at any time prior to 1882, it had not moved that far east.

Mr. Beard was familiar with Willow Point as far back as 1876. This was only four years after the survey of 1870. He testified he had been familiar with Willow Point for fifty years. Had there been an avulsion of the river he would have known it. Every one in the locality would have known it and talked about it. He testified that the channel was east of Newman's Towhead prior to the avulsion of 1912-1913. The river from 1870 to the time Mr. Beard knew it in 1876 would not have moved 700 yards to the east, as the evidence shows that its movement to the east was continuous and gradual.

For the sake of argument, if there had been an avulsion in 1870, after the survey, the channel could not have remained west of Tullos Island until after

1882, and all the witnesses and surveys show this to have been the fact.

There was an island at or near this point, Hopkin's Island, in 1870, but the surveys show this to have been Louisiana territory, and the main channel of navigation was east of this island. The boundary line was necessarily east of this island. The boundary line was therefore closer to the Mississippi shore than to the Louisiana shore.

The evidence showing that to the east of Willow Point there has never been any caving, and that the channel was around Albemarle Bend next to the Mississippi shore, it is exceedingly improbable that an island would form in the channel where the current was strongest.

There is neither evidence nor contention that any of the lower part of Willow Point ever caved away, or that the river at that part was ever west of the line of 1824. Willow Point always being *convex*, and the Mississippi shore opposite always concave, is a physical fact strongly persuasive that at no time did the Louisiana shore line at this point ever recede westward of the 1824 bank line, but that the accessions until the avulsions of 1912-1913 were to the Louisiana shore and the recession opposite on the Mississippi shore.

These Exhibits G. H, I, and J, reproduced from maps of original survey, reduced to a scale of one to twenty thousand, and which maps are superimposed for purposes of comparison, enable us by taking said scale and making calculations of distances in the pro-

portion that an inch on the map bears to a mile on the surface of the earth to determine at different times the approximate width of the river and the amount of accretion to the Louisiana shore between given dates. The approximate width of the Mississippi River between shore lines at different periods is about two-thirds of a mile. The river remained at practically the same width regardless of changes in the channel resulting from accretions on one side and caving on the other. Captain West, of the River Commission, in his testimony (R., 155) says:

> "By following the Charts, as the Mississippi shore receded by caving and the Louisiana shore followed it up by accretions, the river remained at approximately the same width whatever position it had. For instance, you take the Chart 1882 of the Mississippi River Commission, it shows the accretions out beyond the shore line of the Louisiana shore line of 1824, and beyond the shore line of 1866. Just a gradual building out. That is the characteristic of the Mississippi River throughout the lower valley, that it maintains about the same width all the way."

St. Francis Chute.

It is shown by witnesses that there was a place on the Louisiana side which though not shown on the maps was called by local people St. Francis Chute.

Captain Prince was asked by defendant's counsel if he knew a point where the water now *backs up in the old channel of 1823,* in times of high water. He answered "Yes" (R., 39).

The question and answer indicates that even in high water the river did not come through this chute, but that only the lower end of this was open, into which the water, when high, backed up.

This same place is mentioned by Mr. Ernest Newman in R., 55, 56, 58, 59, and 60. He said there was just a kind of a slough there that runs *up to Hendersons,* and it had been there ever since he could remember. That it had never been any channel—*just a little chute behind the bar.*

The witness said in another place that there was a little narrow chute that *comes down along the main shore,* and that the current in high water passed through there and comes over 7 or 8 miles around the bend.

But the testimony also shows that the Newman's old home was built on the bar about 100 yards in front of the mainland, and that there is a depression now at the place where the old bank was—*what bank is left there* (R., 67-51-87.)

The witness of defendant, Townes, said St. Francis Lake, or chute, in 1900 was a little lake on the west side of the river right *down* from Mrs. Newman's place. *That it was the main Mississippi River when he went there, and was named St. Francis Chute years later, and that it filled up* (R., 233).

This witness was 59 years old when this testimony was taken (R., 220), which was in December, 1926 (R., 162). He was, therefore, born in 1867. He went to Chotard in 1880, which is on the Mississippi shore op-

posite the property in question (R., 220). It is, therefore, certain he knew nothing about the locality prior to 1880. It is certain St. Francis Chute could not have been the channel in 1880, and that at the time of the survey by the Mississippi River Commission in 1882 had filled up as indicated. Sheet 17 of the Mississippi River Commission charts shows in 1882 heavy timber growing where Townes testifies was at that time the channel of the Mississippi River.

This witness is contradicted by the surveys of 1866 and 1870, as shown in the table hereinabove set out, and by the survey of 1882, and by the following witnesses, to wit: I. B. Beard, the Newmans, E. T. Purnell, and Capt. Jos. V. De Lahunt.

Mr. Beard, who was born in 1866, and recollected Willow Point for 50 years (since 1876), and was a brother-in-law of the owner, Walter A. Newman, and visited said place quite often (R., 86), said that at his earliest recollection the Willow Point bar had extended out from the mainland one and one-half or two miles; that the bar started right where it joined the bank (R., 87).

The testimony of the Newman boys shows that the Newman's old home was on the bar 100 yards in front of the main bank (R., 67-51).

Mr. Purnell was born in 1866 (R., 259), moved to the Purnell plantation, on the Mississippi River opposite and directly east of Island 98, in 1880 (R., 260). He remained at this place from 1880 to 1897; that he hunted on Island 98 hundreds of times; that when he first knew the Island the *main channel* of the river was

immediately west of Island 98 (R., 261). It could not, therefore, have been through the little chute mentioned. He further said there was a towhead building up on the Louisiana side (R., 265).

Captain De Lahunt was 70 years old (R., 288). He was licensed as a pilot on the Mississippi River in 1879 or 1880 (R., 289); made three daylight trips per week (R., 290), passing up and down the stretch of the river in controversy (R., 291). The channel was west of Island 98 with the current *against the island* (R., 292-293).

Therefore, the testimony of the defendant's witness Townes that when he first went to the locality in question, which was in 1880, that the little chute which is shown to have been south of Willow Point, running up to Hendersons, was the main channel of the Mississippi River, is clearly erroneous.

The witness for defendant, Mr. Etna J. Albrittain, who is claiming part of the land in controversy, made his first trip to the vicinity in question to look it over in July, 1912. (This was after the avulsion in the high water of 1912.) The steamboat which he was on left (what he pleased to call Tullos Island, or Island 98) the island to the left of us. At this time he went over the island part of the land. At this time the water was flowing on both sides.

From this testimony he did not visit the vicinity of what is locally called St. Francis Chute at this time.

The next date he could recollect as having visited this property was in the fall of 1923 (R., 242).

This witness further testified that along the old channel of 1923 (1824) *down* next to Hendersons the water was about 200 yards wide; that Chart 47 shows the channel about 10 feet lower than the land on either side. He said they thought by going up the old river bed they could surround the water that was *backed* into the channel, but could not, as they found water all the way to where it went into the river at the north (R., 246-245).

However, the witness also says: "Well, after a distance of *a mile* north of Hendersons, *there was no discernible bank line on the west* (R., 246). Comment: The first place below Willow Point is just north of the plantation formerly owned by Mrs. M. G. Foster, and called "Pecan Grove Plantation." This place was more than one mile across, and "Hendersons" is the next place below Pecan Grove, so that by the time the witness reached Willow Point he found *no discernible bank line.*

Mr. Beard, being asked as to the property south of Willow Point, said he though it was the Bell Plantation belonging to a Mr. Foster. (This was not Mr. R. E. Foster who testified.) (R., 92.) He got the name of the owner correct, but gave the plantation the wrong name, as it was Pecan Grove. (It seems that Pecan Grove was sometimes called Belle Plantation)

The entire testimony, maps and surveys show that if there was any depression left where Willow Point bar joined the mainland it was very small.

By examining Complainant's Exhibit A, being township survey of T. 19 N., R. 13 and 14, showing the original bank line of Louisiana, as shown by the Gov-

ernment land survey of 1824, it will be seen that the course of the river for several miles just north of the property in controversy is just a little south of east, the course being *almost east,* and that it turned Willow Point in a sharp angle south. This necessarily caused the current to flow against the western part of Tullos Island, or Island 98.

Complainant's Exhibit G, showing the Louisiana bank line of 1866, does not materially change the condition in this regard existing in 1824, except that some caving had taken place along said north line, but very little.

By an examination of the various charts of the survey of 1882 it will be seen that the general course of the river north of Willow Point was still almost east, with a slight trend toward the north, and that it had cut away most of Tullos Island, particularly the southwestern part, and that the channel then flowed against the southwestern part of the island.

In addition to the surveys, Mr. Beard says there was caving on the northern part of Willow Point Plantation (R., 89-93-94); that the channel at this point ran east (R., 90). It had been caving on the north side ever since he could remember. *It was a gradual caving* (R., 94).

This testimony is referred to to show that for the river between 1824 and 1882 to have made an avulsion through the little chute, locally called St. Francis, or at any place through where Willow Point or bar now is, the river must have made such cut-off at a right angle to its course, and such has probably never happened

in the history of the river. However, as the river never went west of the Louisiana bank line of 1824, and as the surveys of 1866, 1870, and 1882 show that the greatest distance the river had moved east from the time of one survey to the time of the next was only 1,245 yards, being less than three-fourths of a mile, and *if not less than the width of the river, approximately its width*, conclusively demonstrated that between said periods there could not have been an avulsion of the river at this point through Mississippi territory, so as to throw a portion of Mississippi territory west of the river, onto which the land in question could have built.

It is shown that the channel was on the Mississippi side east of the land in controversy, and that islands and bars only build where the current slackens so that silt may deposit. Therefore, the claim of the State of Mississippi that complainant has failed to show that such an avulsion had not taken place is not well founded, and this point must be decided against it.

Defendant has made the point that complainant must bring itself within the rule governing riparion proprietors, and that the complainant cannot recover, unless it has shown that the accretions attached to the bank.

Defendant is mistaken in this contention. The State owns the channel of the stream.

It is immaterial whether the formations of land attached to the bank as accretion or formed west of the center of the channel as a sand bar or island, as all islands towheads or sand bars which form in the river

west of the channel belong to the State of Louisiana, as well as accretions that may attach to them.

Since the starting date, 1823, is over a hundred years ago, and since 1882 is over forty-five years ago, it is manifestly impossible to furnish the testimony of eye-witnesses to the changes which took place on the Louisiana shore line between 1923 and about 1876, the date when complainant's earliest witness was familiar with the locality; and since between 1824 and 1866 there is no record of any surveys of the Louisiana shore line in the vicinity of Willow Point to which the accretion claimed is attached, it is likewise manifestly impossible to furnish documentary evidence showing same, prior to the survey of 1866. However, by comparing the surveys of 1824 and 1866, it is shown that the change in the river east of Willow Point, between the dates of said surveys, was only 439 yards, in an easterly direction.

A careful examination and comparison of the lines as established by surveys in 1824, in 1866, in 1870, and in 1882 enables us to calculate and show by comparison and deduction that the easterly extension of the Louisiana shore line from Willow Point toward the Mississippi shore was so gradual as absolutely to negative the suggestion of the State of Mississippi that at some unknown and unrecorded time subsequent to 1824 there had been an avulsion whereby Mississippi territory was thrown west of the channel, and with the accretions formed thereto was Mississippi property and is the property in dispute.

A further comparative examination of the various maps and charts will show that the accretion claimed begins about the dividing line between Sections 4 and 5 and ends about with the dividing line between Sections 7 and 8. There is no accretion whatever to said Sections 1, 2, and 3, and there is no controversy as to the ownership of accretions, if any, attached to said Sections 4 to 9. In superimposing upon his blue prints Exhibits G, H, I, and J, the shore line of the survey of 1866, Capt. Chas. West, of the Mississippi River Commission (a witness for complainant), shows only so much of the 1866 shore line as affects the land in controversy. On one of said blue prints there is likewise superimposed the shore line as ascertained by the survey of 1870.

Complainant, therefore, contends that the first defense has failed.

Answering Defendant's Second Contention.

That if complainant has established that the accretions originally attached to the Louisiana bank, and that said shore line has been progressively added thereto by accretions until 1882 that complainant must fail because defendant's proof tends to show *that subsequent to the year 1882* the Mississippi River above and to the west of Willow Point cut into the Louisiana shore, deflecting the current from a southeasterly to a northeasterly direction; that because of this deflection in its course, the river cut around the head of and to the north and east of what was left of Tullos Island,

scouring out the old chute between the island and the Mississippi shore, and making a new channel there; that the old bed of the river filled up so that Tullos Island became attached to the Louisiana shore; that the river continued to cave the Mississippi shore, adding to the island by accretion until the year 1912-1913, when it suddenly abandoned its new channel and went back to the old 1882 channel, leaving Tullos Island again and in truth an island, but greatly enlarged by the accretions added thereto.

This contention of defendant is also disputed by complainant, complainant contending that Tullos Island, or Island 98, and any adjacent islands were washed away by the river in 1894, or prior thereto, and not a vestige of Tullos Island, or Island 98, or any other island adjacent in the disputed territory, was left remaining in that stretch of the river; that this has been established by the evidence.

Defendant contends that what complainant calls Newman's Towhead is in fact Tullos Island, or Island 98, which was Mississippi territory in 1923, and remained Mississippi territory. See defendant's answer, paragraph 5, subparagraph 5.

The determination of this question will determine whether defendant can make good on its second contention.

If, in reality, there was a bar on the Louisiana side of the channel existing in 1882, at the same time that Tullos Island existed in Mississippi, and Tullos Island, or any island of the State of Mississippi adjacent, within the territory in dispute, caved away, and

Newman's Towhead, prior to the avulsion of 1912-1913, occupied a large part of the position where Tullos Island, or Island 98, had been in 1823 and 1882, then complainant's contention must be held good, and the territory in dispute awarded to the State of Louisiana.

Before going minutely into the discussion, an error which complainant's counsel fell into with regard to the elevations, as shown by the survey of 1894 between the main banks of the river, will be considered.

Error of Complainant's Counsel as to Captain Marshall's Testimony Made in the Original Brief

Capt. Chas. H. West, a member of the Mississippi River Commission, had stated as follows (R., 151):

> "The survey of 1894 did not take in the topography. It only took in the change in the position of the river alone, and that survey was platted on the charts of the 1882 survey."

On R., 149, Captain West further said the survey of 1882 included

> "the shore lines—two banks of the river. It included the topography as it existed at the time of the survey out also about one mile from either side of the river, etc."

Counsel for complainant concluded from this that Captain Marshall had fallen into error in giving elevations between the main banks of the river as shown by the survey of 1894; and on page 67 of its brief complainant said:

> "Certainly these deductions of Captain Marshall, based on the errors of fact, and ignorance of what the survey of 1894 showed, cannot overthrow the testimony of the eye witnesses to the fact that Island 98 entirely disappeared, especially when such testimony is shown to be true by the survey of the Mississippi River Commission of 1894."

It now appears that it was the ignorance of complainant's counsel and not that of Captain Marshall as to what the survey of 1894 showed in regard to elevations between the bank lines.

Counsel for complainant assumed, as Captain West had said, that the survey of 1894 did not take the topography, but that the survey was superimposed on the chart of 1882, that the elevations referred to by Captain Marshall were those of 1882, on which the survey of 1894 was superimposed.

In this counsel were wrong and admit our error, and regret that it occurred.

We only received a typewritten copy of defendant's brief in the afternoon of Saturday, September 15, 1928, in which defendant very astutely and forcibly calls the attention of the Court to the above error, whereupon complainant's counsel at once arranged a trip to Greenville, Miss., to interview Captain West in regard thereto, so as to definitely determine whether they had made the mistake alleged by defendant.

We know that the statement of Captain West in regard to this matter *can in no manner* be received as evidence in the case, but is only in the nature of a

statement from counsel, and we do not insert the statement of Captain West to be taken as evidence, but we asked him questions in regard to the alleged error, and as to what effect such error would have on the conclusions of complainant's counsel. These were taken down and answered in writing. In order to get this statement exactly as made we here insert it:

> "Q. Captain West, you state in your testimony, R., p. 151, as follows:
>
> "'The survey of 1894 did not take in the topography. It only took in the change in the position of the river alone and that survey was plotted on the chart of the 1882 survey.'
>
> "Counsel for complainant (R., 151) assumed from the above statement that no topography or elevation at all was shown on the 1894 survey, not even between the main bank lines. Were counsel for the complainant correct, and, if not, how far were they incorrect in their understanding of your testimony?
>
> "A. You are not correct in assuming that no elevations were taken at the time of the 1894 survey. The 1894 survey was what is known as a low-water and hydrographic survey and did not extend beyond the bank lines, its purpose being to show the position of the river at that time. There were elevations taken to show the depths of water and elevations between the bank lines as is the case in all hydrographic surveys, but no typography beyond the banks of the river was taken. The elevations were for the purpose of not only showing the depth of the water in the channel but the shape and heights of the bars between the bank lines.
>
> "Q. If the elevations existed in 1894, as

claimed by Captain Marshall and shown on Exhibit 4 (A), (B), and (C), is it possible for said elevations to have been on either Tullos Island, or Island 98, or other islands or said bars adjacent thereto in 1882 on the Mississippi side of the river?

"A. No. By the time of the 1894 survey Tullos Island, or Island 98, and also the islands or bars adjacent thereto had entirely disappeared, because as the river swung eastward these islands were caved away and the channel of the river had occupied the area where they had existed.

"Q. Then if said elevations existed in 1894, were they not of land then necessarily on the Louisiana side of the river known as Newman's Towhead?

"A. Yes. Any elevations existing in 1894 on the west side of the channel of the river and between that and where the Mississippi shore had been in 1882-83 was the surface of deposits or accretions that had formed on the point on the west side of the river as the channel moved eastward by caving. It is quite possible that some of these deposits had built up to as high or even a higher elevation than had been the original surface of Tullos Island. As the concave bank on the east or Mississippi side receded by caving, the point opposite on the Louisiana side built out by accretions or deposits. The height of such deposit increases as flood heights increase. I have often heard this point on the Louisiana side called Newman's Towhead.

"Q. Captain Marshall said that he was on Tullos Island in 1890 and there were two islands with a chute running between the two. While he was there a mail boat passed up the chute and an anchor line boat passed through the main channel on the western side of both islands. There were trees on both islands, mostly cottonwoods and willows. There was a swift current between the two islands and a channel to the east of both islands, possibly 100 feet wide. Does such a statement from Captain Marshall in any way contradict the facts as shown by the Mississippi River Commission survey of 1894, that both islands had entirely washed away?

"A. It does not. A strip along the east side of the island did exist in 1890, but between 1890 and 1894 the Mississippi shore receded between 300 and 400 feet a year, or a total recession during the four years of about 1,500 feet. In 1894 the channel of the river occupied the position where that portion of the island had been in 1890.

"By CHAS. H. WEST.

"Greenville, Miss., Sept. 19, 1928."

However, the fact that complainant's counsel made this error can in no way affect the result of the case if we are able to show to the Court that complainant has established every material allegation of the bill of complaint.

Referring to Captain Marshall's testimony, Exhibit 4 A, B, C, giving the detail tracing of the United States Engineers' survey of 1894, he lays stress on the fact

that, in the upper right hand corner of the sheet, contour lines are shown, indicating a height of one hundred and ten (110) feet, Memphis datum, and that on said place is marked "Willows."

In his Exhibit 4-D, he has shown these contours, but in place of the word "Willows" he has substituted the word "Timber," which is an apparent alteration of the work sheet from which Defendant's Exhibit 4-D is said to be made up. This would be misleading, for the reason that "Timber" conveys the idea of large trees. Referring again to Exhibit 4 A, B, C, in other locations on the same work sheet, appear the words "Switch Willows," "Willows," and "Large Willows." The words "Large Willows" will appear on what is seemingly the older or higher bank. Had the timber, on the high points now being discussed, been large timber, the engineers would presumably have so marked it, as they did in other places. On what is undoubtedly the old bank, being the shore line of 1882, timber is described as "Willow" and "Cottonwood," indicating that the word "Willows" is used usually for the smaller or younger timber growing on the bars. This interpretation is further sustained by Chart 47 (Complainant's Exhibit F), in evidence where the heavier shading, indicating large timber, is marked "Willow" and the light shading, indicating small timber, is marked "Willows." Chart 45 of the Mississippi River Commission, being Complainant's Exhibit E. E., will show Tullos Island as being covered with oak, cottonwood and hackberry and shown by the shading to be large timber. If defendant's

contention were true that the high ground referred to and claimed by him to have been a portion of Tullos Island that had not caved away, this work sheet would doubtless have shown in place of the word "Willow" the words "Oak," "Cottonwood," and "Hackberry," and would have shown it to be large timber, instead of small timber, as indicated by the use of the word "Willows."

The above facts indicate that Captain Marshall's deduction is wrong, and that what was once "Tullos Island," or Island 98, was completely washed away, the channel of the river having swept completely over what was the location of the island and eastward thereof; that the sand bar from Louisiana shore continued to build out and build up high toward the outer end, and that "Willows" did spring up on this higher ground, and, as they grew and the current of subsequent high waters covered this point, the slackening current, because of the willows, caused silt to be further deposited and the process of making higher ground was continued thereby, and that said location is what is shown on Chart 47 as Newman's Towhead, being Exhibit F of complainant, and is not Island 98.

It may be further noted that the high ground claimed on Exhibit 4-D to have been Tullos Island in 1882 extends, according to said exhibit, about a third of the way across what said exhibit shows to have been the channel of the river in 1882 and across the thalweg at that time. This deduction from the survey and contour lines of 1894 would place a portion of the land that is claimed by defendant to be Island 98 continu-

ously since 1822 to be west of where said island is shown by his exhibit to have been and across where the thalweg of the river was in 1882.

Captain Marshall states (R., 173-174) (referring to Exhibit 4):

> "The fact that the island elevation shows a reading of 110, and the water survey on the shore line shows a reading of 60 feet, is absolute proof of the fact that the island was fifty feet above the water surface at the time of the survey, with trees growing on top of it. I can state of my own personal knowledge that in 1890, four years before the survey was made, that Island 98, or Tullos Island, the island above it, had not been washed away, but was still in existence. Of course, everybody knows that an island cannot be washed away and then four years later be built back with big trees growing on it, as shown by this survey."

This testimony is confusing and is liable to mislead. While Captain Marshall shows some of Tullos Island had not entirely caved away in 1890, he does not show what part remained there at that time. He said at the time the chute between the island and the Mississippi shore was possibly 100 feet wide (R., 173). The caving was therefore on the western side and not on the eastern side of the island. At this time, 1890, there could have been a very small strip of the island left in sections 21 and 28, while more than 1¾ miles of the southwestern part, and probably more than 1 mile of the western and northwestern part, of what had been the

island in 1882, had disappeared and the place where it had been was then covered by the river, and accretions from Willow Point Sand Bar and Towhead, which had extended across from the Louisiana shore.

The elevation of 110 which Mr. Marshall speaks of was shown on the work sheets of the survey of 1894, which was four years later than when he last saw the island, at a time when the survey of 1894 shows, that the part of the island which was left in 1890 was then either in the channel or covered by accretions from Louisiana. So that the 110 elevation, shown by the work sheet of the survey of 1894 as being in the same location as where a part of Tullos Island had once been, was Louisiana territory, as the same survey from which Mr. Marshall got his data 1894 show such to be the fact Captain Marshall's theoretical conclusion that Island 98 did not entirely wash away is apparently based (1) on the elevations shown by surveys according to exhibits 4 A, B, and C. Let us analyze his theory and conclusion. He loses sight of the fact that since even before 1890, with the constantly increasing volume of water which the lower Mississippi has to carry (due to the clearing of lands in northern and western States) for the protection of alluvial lands in the lower valley vast levees have been built and yearly raised in height. That these levees have been built many feet in height above the mainland. That almost annually the river confined between these levees rises to the height of the levees and above the level of the mainland (and frequently flows over the levees). He loses sight of the fact, which is of

common knowledge (as well as being testified to), that islands and towheads formed by accretion speedily rise to a height or level or *above the level* of the land on the main shore. This is an explanation of the high levels shown in his exhibits which negatives the conclusion or deduction or theory advanced by him that the high bar, or Newman's Towhead, must be the remains of Island 98.

Captain Prince, an old river captain, testifying as to the building up of bars and towheads in the river where willows sprung up says (R., 26-27):

> "Q. As these willows grew what changes took place with reference to the bar where the cottonwood and willows sprung up with reference to the alluvium deposit?
>
> "A. Trees grew there, and where trees grew the *land built up higher, higher than the mainland.*"

Captain Reed, another old river captain, testifying in reference to Newman's Towhead in the year 1900 (R., 125), says:

> "Q. How high was the timber at that time (1900)?
>
> "A. I judge that some was thirty-five or forty feet high.
>
> "Q. How high was that above the surface of the water?
>
> "A. You will have to tell me what the stage of the water was.
>
> "Q. Well in ordinary stage.
>
> "A. The towhead as *about as high as the mainland* over next to where I told you I saw

> the old house. The towhead was just about as high as the mainland."

So the deduction of Captain Marshall that because a map of survey shows a bar or an island or a towhead to have a high elevation that, *ipso facto,* it is land of old formation, or in this particular case indicates that Island 98 did not entirely cave away is a *non sequitur*—and at most only his personal opinion.

Captain Marshall said (R., 175):

> "In 1890 during the high water I was in charge of the levees from R. E. Foster's place down to the end of the Mississippi River District at Brunswick." * * * "One morning while there I went out with Jack Chilton to meet the mail boat which came up the chute on the eastern side of Tullos or Island 98." * * * "There were two islands, with the chute running between the two. While we were there and the mail boat passed up the *chute side* an anchor line boat passed down the main channel on the western side of both islands. There were trees growing on both the islands, large cottonwood and willows. There was a swift current flowing down between the two islands and a channel to the *east* of both islands. Without being able to say how wide it was, it was possibly 100 feet wide, enough for the mailboat."

Now this was in 1890. Note that some of Island 98 still existed. Note that the width of the chute between what then remained of Island 98 and the main shore of Mississippi *was possibly 100 feet wide,* only.

Captain Marshall's theory deducted from surveys,

was that the island never all caved away. Captain West said it all disappeared, and he was there three years later than Captain Marshall. The 1894 survey of the Mississippi River Commission sustained Captain West's view, and the eye witnesses showed that Captain West was correct.

Mr. E. T. Purnell, who from 1880 to 1897 lived on the main land directly across the chute from Island 98, was familiar with it, hunted on it hundreds of times, and testified (R., 263):

> "Q. Was the channel at any time between your farthest recollection of that place in 1867 and 1897, between the Island and the Mississippi shore?
>
> "A. No, sir.
>
> "Q. Do you know whether or not the island ever entirely disappeared, Mr. Purnell?
>
> "A. Yes, sir.
>
> "Q. Do you know when it disappeared?
>
> "A. Either in 1894 or 1895, during the high water of one of those two years, during high water. But as I say, I am not positive which." (He later said it disappeared in 1893, 1894, or 1895, R., 282.)
>
> "Q. Did you say it disappeared or not?
>
> "A. It did (R., 264).
>
> "Q. Then how did it disappear?
>
> "A. It washed out entirely.
>
> "Q. There was not a vestige of it left of any sort?
>
> "A. No, sir.
>
> "Q. Up to the time of the disappearance of that island, where was the main channel of the river?
>
> "A. *It was to the west of the island.*"

We submit to the Court, which is the better evidence as to whether the island disappeared, the deduction of Captain Marshall based upon theory, or the positive testimony of Mr. Purnell, based upon personal knowledge?

We now direct the attention of the Court to the testimony of witnesses for Louisiana and Mississippi respectively, as to the entire disappearance of Island 98, or Tullos Island.

To rebut the testimony of complainant, the defendant offered the testimony of two negro roustabouts, Lawrence Towns and William Miller, who served on boats on which Captain De Lahunt was pilot.

An examination of the testimony of Lawrence Towns will at once convince the Court that they cannot rely upon it.

William Miller's testimony was clearer. But when he said that Tullos Island did not entirely disappear, he was at least in error.

Mr. R. E. Foster does not seem to have known much about the island in later years.

The witnesses best qualified to testify to changes in the Mississippi River itself are steamboat captains and pilots, whose business it was to study the river, and who went up and down the river between Vicksburg and Greenville, constantly passing the place in controversy.

We urge the importance of the testimony of Louisiana's witnesses, Capt. George Prince, a veteran steamboat owner; of Capt. William H. Reed, afterwards sheriff of Adams County, and of Captain De Lahunt, a veteran pilot, now in the service of the U. S.

Engineers' Office, at Memphis. We do not deem it necessary to quote their statements, but refer the Court to same as contained in the record. These gentlemen, as captains and pilots on steamboats, in the performance of their duties of necessity closely observed conditions and changes in the channel and along the shores of the Mississippi River. There is no confusion or ambiguity in their testimony. A careful reading of their testimony establishes beyond doubt that Island 98, or Tullos Island, as mentioned in bill of complaint and shown on maps and as defined in defendant's brief, caved away and entirely disappeared as the Mississippi River moved easterly.

The testimony of Mr. E. H. Purnell, whose family owned the Auraton, or Purnell Plantation, just across the chute from Island 98, is so clear, concise and emphatic, and based on such intimate personal knowledge, that it alone should be sufficient to satisfy the Court of the total disappearance of Island 98.

Mr. Hume was another witness for defendant. He first went to Chotard's only the last of October, 1896, and remained till January, 1907 (R., 191). This was after the Island 98 had entirely disappeared, according to the preponderance of testimony. Then how could he testify regarding it if it had disappeared before he went there? As a matter of fact, his testimony shows that he was testifying with reference to Newman's Towhead, and when he says he was familiar with Island 98, he meant Newman's Towhead (R., 191).

> "Q. Were you familiar with the tract of land known as Island 98, or Tullos Island?

"A. Yes, sir.

"Q. When you went there in October, 1896, what was the situation with respect to Island 98, whether it was there or not, and how much, if any?

"A. Oh, yes, sir, there was *land there* all right enough, yes, sir.

"Q. Describe the water about that land.

"A. The water—the river was eating in on the Mississippi side, caving in on there, and the land, well of course,—well, the upper part of that land was *almost due west of Chotard Landing.*

"Q. Was that across the river?

"A. *Yes, sir.*

"Q. Now was it an island?

(Note the leading question.)

"A. Was it an island?

"Q. Yes, sir.

"A. *At that time we called it a bar.*"

(Comment: And a bar it was; it was Newman's Towhead, as established and shown by maps and testimony of witnesses. Now what is the testimony of Mr. Hume worth, a witness who had never been to the locality till October, 1896?)

The testimony of this witness is manifestly applicable only to the Newman's Towhead as it existed between 1896 and 1907. He had no knowledge of conditions prior to that date; and if (as we believe) the total disappearance of Island 98 before that date has been established, the rights of the State of Louisiana had become established and fixed before he ever appeared on the scene.

Manifestly, in order for defendant to sustain its theory as to the changes in the river and shore lines subsequent to 1882, it must rebut Complainant's proof that Island 98, or Tullos Island, as it existed in 1823, and as its boundaries are defined by the United States Surveys of Mississippi of that year, had, by erosion and caving, entirely disappeared; otherwise, the contention of the State of Louisiana is conclusive.

The State of Mississippi endeavors to negative the contention of the State of Louisiana by offering testimony of Capt. Horace Marshall and of several witnesses to prove that said original Island 98 did not entirely disappear.

We respectfully submit that the testimony of Captain Marshall is highly technical and theoretical and proves nothing unless his theoretical and technical deductions are accepted and the positive physical evidence of maps of the Mississippi River Commission surveys showing the gradual changes in the channel of the river, the gradual projection of the Louisiana shore by accretion, the gradual and final disappearance of Island 98 by caving, and the gradual caving and recession of the Mississippi main land shore by caving, is ignored and disregarded.

The evidence of maps of survey of the Mississippi River Commission of 1882 and subsequent years, and which are in evidence, need only to be carefully examined to sustain complainant's contention as to the changes which took place subsequent to 1882, at which time (1882) there was a clear river between the Louisi-

ana shore and what then remained of the original Island 98, or Tullos Island. We do not believe that these plain physical facts, shown by these surveys and maps, explained or interpreted by as imminent an authority as Capt. Chas. H. West, of the Mississippi River Commission, can be overthrown by the theoretical and technical deductions of Captain Marshall that Island 98 did not all disappear, especially so in view of the fact that the last time that he personally inspected the locality in question, about the year 1890 (R., 173), when Captain West had been there in 1893 (R., 156).

Let us now consider Captain Marshall's testimony as contained in the record:

First. Does Captain Marshall himself lose sight of the fact that, as shown in the survey of the Mississippi River Commission of 1882, that Island 98, or Tullos Island, embraced only a part of Section 21 and a small part of Section 28, T. 9, R. 8 W., Choctaw District, Mississippi; that this small part continued to cave, and that in 1890 there must have been a very small part left.

On page — of defendant's brief, we read:

> "Complainant's Exhibit M, Mississippi River Commission, Chart #45, Survey of 1882, shows that Tullos Island, or Island 98, was in existence at that time. This chart *also shows another island* located to the northwest of Island 98, *not named on the chart.*"

If it was another island, and it was, manifestly it could not properly be called or referred to in brief,

or otherwise, as upper "Island 98 or Tullos Island." There is no connection whatever between the two islands.

On same page of brief we read further:

> "Captain Marshall in his testimony refers to these *two islands* as Upper and Lower Tullos Island" (R., 171-175).

But exactly what does Captain Marshall say (R., 171)?

> "Exhibit 3, sheet 17 of the Mississippi River Commission. That shows there was another island on the Mississippi side of the Mississippi River, *Island No. 98, which is the same thing as Tullos Island*, the island above that, up stream on the Mississippi shore."

This does not call it Tullos Island, or Upper Tullos Island. The underscoring is ours. He says Island 98 is the same thing as Tullos Island (see chart); but does he say the other island is either Island 98 or Tullos Island, or any part of it?

Again (R., 175), referred to in defendant's brief, Captain Marshall says:

> "One morning while there, I went out with Jack Chilton to meet the mail boat which came up the chute, on the east side of Tullos, or Island 98, and landed against the levee and put off the mail for Jack Chilton. There *were two islands*, with the chute running between the two."

Again Captain Marshall does not say the Upper Island was Tullos Island. We can only determine what Captain Marshall means from what he says.

The testimony of Captain Marshall that Island 98, or Tullos Island, *did not* entirely disappear by caving into the river, is only his opinion, and theoretical deduction, and is contrary to the physical facts shown by the Mississippi River Commission maps, and is contradicted by the great weight of testimony showing the facts, and the physical facts which sustain the eye witnesses. Complainant has not contended that a small part of the northerly portion of the so-called "other island," north and west of Tullos Island, caved away, and does not claim that a portion of said so-called "other island" that failed to cave away, is Louisiana territory.

It is not Louisiana territory, is not near where Tullos Island was, nor where Newman's Towhead now is.

By an examination of sheet 17 of the charts of the Mississippi River Commission, being the survey of 1882, this "other island" is shown, and is of considerable length, the lower end being marked High Bar, the upper end not appearing to have any trees upon it.

By examining the survey of 1894, it will be seen that the southwestern corner of what had been this island had entirely caved away, and its location covered by the sand bar from Louisiana; that most of what had been this island was then in the channel of the river and the balance, the little part left, in the shape of a foot, covering a small part of the N. E. ¼ of Section 18 and the S. E. ¼ of Section 7, was in the

State of Mississippi and several miles distant from the property in controversy.

By examining sheet 17 of the Mississippi River Commission, showing the survey of 1894, it will be seen that this small remaining part of said "other island" is just south of a northern off-set in the levee on Magna Vista Plantation.

As stated, this was never Louisiana property, and is not claimed to be within its boundaries, and has no bearing on this litigation.

Counsel for defendant, in his brief, states as follows:

> "It will be recalled that the testimony is undisputed that the Islands were in existence in 1893, and yet one year later by the Survey of 1894, it is shown that there were then cottonwood and willow trees growing on the high ground. (The Islands.) It is inconceivable that if the island had completely washed away, as contended by the complainant, the Tow Head could have built back in that one year and have had growing upon it cottonwood and willow timber. The analysis of the undisputed facts reduces the contention of complainant to an absurdity."

The above deductions of counsel are incorrect because the above-quoted statement of what the testimony shows is incorrect. The survey of 1894, Defendant's Exhibit 4-D, shows high ground in Sections 17, northeast corner of 20, and west portion of 21, and east portion of 20, and shows this high ground to have timber on it. The work sheets of the surveyor's office, exhibits

4-A, B, C, has, where defendant has marked timber, the words, "Willows," indicating young growth. Furthermore, this high ground is not in the same location as Tullos Island was in 1882 and is more than three-fourths of a mile from what would have been the last part of Tullos Island to cave away. There is nothing in the testimony of witnesses to indicate where the last part of Tullos Island to cave away was with reference to the section lines; but all of the witnesses testify that the caving was from the western side of the island. Therefore, the eastern side of the island would naturally have been the last to disappear.

Defendant's Exhibit 6-F shows that in 1882 the chute between Island 98 and the bar above, erroneously called by counsel for defendant "Upper Tullos Island," occupied approximately the line of what he shows as the eastern part of the high ground shown in the survey of 1894, and said Exhibit 6-F shows that where he had marked "high ground" and "timber" on Exhibit 4-D, was bare sand bar on Exhibit 6-F.

All testimony, instead of being as counsel for defendant claims to the effect that this high ground in Sections 17, 20, and 21, was in the same place as Tullos Island in 1882, or at any time thereafter, is to the contrary and indicates that the last part of Tullos Island to cave away was the eastern portion farthest away from the high ground shown on the survey of 1894.

Newman's Bar and Tullos Island.

Is it true, as alleged by defendant, that what complainant calls Newman's Towhead is in fact Tullos

Island, as alleged by defendant in paragraph five, subparagraph five, of its answer?

Complainant contends such is not the fact.

The evidence clearly establishes that after the disappearance of Tullos Island, or Island 98, Newman's Towhead built up on Newman's, or Willow Point Bar, and that it became prominent about 1900 (R., —).

If Tullos Island and Newman's or Willow Point Bar existed at the same time, and were distinct properties, on opposite sides of the river, and Newman's Bar never disappeared, but still exists, then defendant's contention in this regard is unfounded.

1st. Did they both exist at the same time?

2nd. Were they on opposite sides of the river?

3rd. Did Newman's or Willow Point Bar ever wash away?

I.

Did Both Exist Simultaneously?

There is no dispute that Tullos Island existed in 1882. Captain Marshall says there was some of it there in 1890 (R., 173).

Newman's or Willow Point Bar existed at the same time.

Mr. Beard said at the earliest time he could recollect (1876) Newman's Bar (on Louisiana side) had extended out from the mainland a mile and a half or two miles, or something like that, and continued to grow each year afterwards (R., 87). A towhead subsequently formed on this bar, and grew year by year, *getting higher and higher.*

Ernest Newman could recollect as far back as 1893 (R., 66). Newman's Bar then extended about one and a half miles from the mainland (Louisiana) out to the water's edge. It was a continuous bar all the way out (R., 68). After the cut-off, 1912-1913, the island was called Willow Point Island. His place there was called Newman's Towhead—same thing. (That is, Newman's Towhead was a part of Willow Point.) (R., 69.) Mr. Purnell was born in 1866 (R., 259), and moved to a place opposite Tullos Island in 1880. He was on Willow Point Bar when he was a boy (R., 268). (The bar was higher toward the river.) As witness said boats could go through between the towhead and the mainland in high water, but in low water it was all connected with the mainland (Louisiana) (R., 269).

Captain Reed said the towhead *became prominent in 1900* (R., 103). From the record no other conclusion can be reached than that both Tullos Island and Newman's Bar, which bar was connected with the Willow Point Plantation of Walter R. Newman, existed at the same time.

II.

Were Tullos Island, or Island 98, and Newman's Bar on Opposite Sides of the River?

It is admitted that Tullos Island, or Island 98, was in the State of Mississippi.

Was Newman's Bar on the opposite side of the river from Tullos Island?

Let the witnesses answer:

Mr. I. B. Beard says this: "The main channel of the

Mississippi River was at all times prior to 1912, *east of Newman's Towhead* (R., 89).

Mr. Ernest Newman says the same (R., 52-53).

Mr. Geo. R. Newman says the same (R., 74).

Capt. George Prince says the same (R., 27).

Captain Reed says the Towhead was on Louisiana shore in 1900 (R., 104, 105).

Lawrence Towns shows Newman's Towhead west of the river prior to 1912 (R., 233).

The entire record shows beyond even the most fanciful doubt that Newman's Towhead, Newman's Bar, and Willow Point Plantation, which belonged to Mr. Newman and his transferees, were on the Louisiana side of the river prior to the cut-off of 1912-1913, and that the same and Tullos Island, or Island 98, were distinct properties.

Did Newman's Towhead Wash Away?

The testimony of the following witnesses show that Newman's Towhead never washed away:

Capt. George Prince (R., 27-30).
Capt. W. H. Reed (R., 105-106-108-109).
I. B. Beard (R., 67-68-69-70).
Ernest Newman (R., 52).
Geo. R. Newman (R., 69).

We submit that there can be no doubt that Newman's Bar and Tullos Island existed at the same time, from prior to 1880 until about ~~1900~~ 1894; that they were distinct properties, one on one side of the river and

the other on the opposite side; that Newman's Bar, attached to Willow Point Plantation in Louisiana, was Louisiana territory. If Newman's Towhead existed prior to 1912 it could not have washed away, as it was on the convex bank of the river.

The surveys show that what was a bar attached to Willow Point extended and covered a large part of the place formerly occupied by Tullos Island, or Island 98, in 1823.

It is certain that the bar and towhead did not cave away prior to 1912. It is certain it did not do so afterwards, and therefore still exists.

If the property in litigation is Tullos Island, let the defendants tell the Court what became of Newman's Towhead.

Did Tullos Island Wash Away?

It is admitted that Tullos Island, or Island 98, was Mississippi territory, and that at the time of the first Government land survey was composed of parts of Sections 20, 21, 28, nearly all of 29 and part of 30, in T. 9 N., R. 8 W., according to what is known as the land survey in the Choctaw Session (R., 135).

There is no dispute of the fact that in 1882, all of this island had washed away, except a part of Section 21, and a small part of 28.

The survey shows that between 1823 and 1882, Tullos Island, or Island 98, had caved away in its western side, more than one mile, and on the southern part more than one and three-quarters miles, and that the bar on the opposite side the river, at Willow Point, had advanced at about the same ratio.

This fact is easily determined by taking charts of the surveys of 1823 and 1882, reduced to a common scale, and taking tracings from the 1823 survey and placing same over the 1882 survey.

Such tracing will demonstrate that the caving was all along the western side of the island, but greater at the southern end. This is apparent to the naked eye, from an examination of the surveys. The lower end of the island in 1823 extended west nearly to the center of Section 30, while in 1882, the lower end was more than a quarter of a mile east of the ~~eastern~~ western section line of Section 28, a distance of at least one and three-quarters miles.

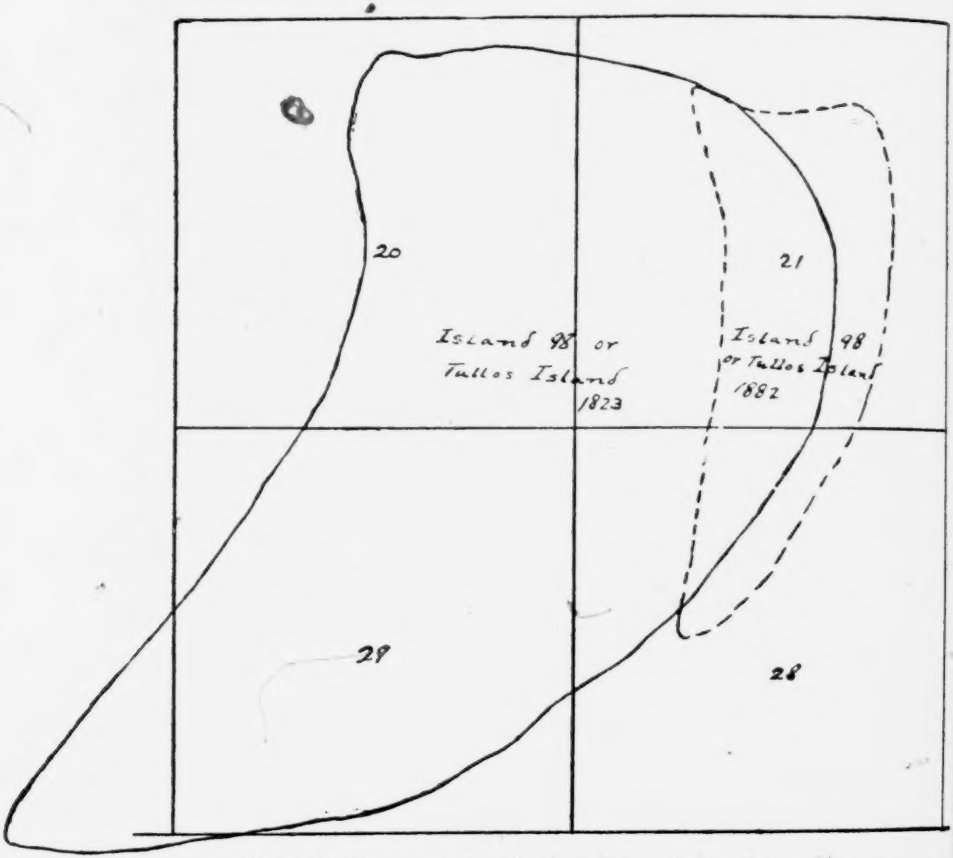
This physical fact is a mute, but unanswerable, argument to show that the current of the river was directed against the western side of the island, but more at the lower end.

This would follow, as the evidence shows that the river at this point maintained about the same width.

It follows that Newman's Bar, in 1882, necessarily occupied a part of the place formerly occupied by Tullos Island, and according to the evidence and surveys, the part so occupied was at least from one mile to one and a half miles, while less than one mile in width of Tullos Island was left. Even all of this was not the original island of 1823, as it had been added to on the eastern part by the partial filling up of the old chute between the island and the main bank. The surveys of 1823 and 1882 compared, show this. See illustration attached:

Physical Facts to Show Tullos Island Entirely Washed Away.

The surveys of 1823 and 1882 show that between those dates the current of the river was mostly against the southwestern part of the island, and that this part of the island had caved more than other parts, more



than a mile of that part of the island having disappeared. This is illustrated by the tracing herein above shown.

Until 1894 the caving north of Willow Point was gradual, and had been so for more than fifty years. This is shown by the testimony of I. B. Beard. He said the caving had been going on ever since he could recollect (R., 94), which was fifty years (R., 56).

It would follow that the current of the river which was against the southwestern part of Tullos Island in 1882, was gradually brought up more against the whole western side, and with this more direct force of the current against the island that it would cave more rapidly. The survey of 1894 shows that the northwest corner entirely disappeared first and at the date of this survey the bar from Louisiana had extended over same, while the balance of where the island had been was then in the channel.

Some of defendant's witnesses say this island did not all cave away. The colored witness, Miller, said all of it did not cave away; said that about seventy-five or eighty acres were left on the *north* end.

This witness said the island did not cave much until 1896; that prior to 1896 the big caving was not inside next to the chute, but was on the outside of the island, and at the lower end; that it caved a right smart at the lower end, and sometimes the big trees would fall in the river as it caved (R., 310).

Viewing the entire evidence, we think the court must come to the conclusion that this witness is in error when he says all of Tullos Island did not wash away.

Mr. Foster, a witness for defendant, when asked whether all of Tullos Island had washed away, answered: "It never all washed away; no, sir. If it did,

I didn't see it. All of the main part is there now. It never all washed away" (R., 209). He could not say how much was not washed away (R., 210).

Without going particularly into Mr. Foster's testimony, a careful examination of it shows that in later years he knew exceedingly little about the island, and his testimony could not outweigh the testimony of complainant's witnesses, Purnell and De Lahunt, one of whom lived on the family plantation, immediately opposite the island, and saw all of it cave away; and the other, a steamboat captain who made three trips a week by the island, passing it six times a week, and saw every vestige of it wash away.

The timber on Tullos Island, as shown by the survey of 1882, was virgin timber, cottonwood, hackberry, and gum (R., 151). Mr. Purnell said this timber was virgin growth, some oak and gum he judged four feet through. He knew one big cottonwood he judged to be seven or eight feet through (R., 262).

The timber on Newman's Towhead was nearly all cottonwood and willow, which grows principally on alluvial soil. See testimony of Captain Purnell (R., 26, 27, 32), Captain Reed (R., 100, 104, 105, 124, 125, 126), Ernest Newman (R., 53), Geo. R. Newman (R., 69, 71, 72), Mr. Beard (R., 87, 88, 89), C. H. Hume (R., 193).

Captain Reed was on this property in controversy in 1926, and the timber on it is cottonwood and willow (R., 109).

Mr. Albrittain said the timber was cottonwood and willow, oak, sycamore, and dogwood (R., 249). He did

not measure the size of any oak; he thought they were 16 or 18 inches in diameter, but just a few of them (R., 255). He was not paying any attention to their size. He did not know of many sycamore, and did not measure them. He was not paying any attention to their size at all.

He only noticed one dogwood and, as he remembered, it was about four inches in diameter (R., 256).

The court will recall that Mr. Albritton is claiming to own a part of the land in controversy (R., 253), and that he made the trip on the island when he measured the cottonwood, which was October 21, 1925 (R., 245), before the testimony was taken, and yet he says he was not paying any attention to the size of the trees.

Complainant maintains that the great preponderance of the testimony shows that all of Tullos Island, or Island 98, had entirely washed away before the survey of 1894.

Captain Marshall shows some of Tullos Island had not washed away in 1890 (R., 173). All the surveys and testimony show that the river was progressively proceeding in an easterly direction. It follows that eight years after 1882, or in 1890, there was very little of Tullos Island left. Captain Marshall did not tell the court that much of it was left, and the court would be justified in assuming that very little of Tullos Island was left in 1890.

The Survey of 1894.

This survey was superimposed in red lines on the chart of 1882, no new chart being made.

By examining Sheet 17, of the Charts of the Mississippi River Commission Survey of 1894, superimposed as stated on the chart of 1882, it will be noted:

> "The surveys of 1882 are shown in black. The shore line surveys of 1894 by the light lines in red; full lines representing banks, and broken lines representing bars. The controlling levee lines of 1899 are shown by heavy red lines. Names of landings established since 1882 are shown in red (thus) * * *."

Sand Bar Above Island 98.

By this survey of 1894 it is shown that the bar line from the Louisiana shore had extended over most of what was formerly the sand bar, or island, above Island 98, and that most of what had been the balance of said sand bar, or island, north and west of Island 98, was then in the channel of the river, and what little part of said sand bar that was left was attached to the southwestern part of Section 18, and the southeastern part of Section 7, and more than a mile distant from *any* of the property in controversy, and has no bearing on the case whatever, so this eleventh-hour contention is wholly unfounded.

This survey further shows that the Louisiana bar had extended over what was, in 1882, a small part of the northwest corner of Island 98, or Tullos Island. This survey also shows that said small part of the northwest corner had previously washed away, or else the bar from Louisiana could not have extended over the place where this part of the island had been.

This survey further shows that what had been the balance of Tullos Island in 1882 was then, 1894, in the channel of the river.

Unless this survey is erroneous, there was not a vestige of Tullos Island existing at the time of the survey in 1894.

Complainant does not have to depend entirely upon the surveys to show that Tullos Island or Island 98 entirely washed away.

This is shown by eyewitnesses. The following witnesses say that this island entirely disappeared: E. T. Purnell, R., 264, 265, 283; Capt. Jos. V. De Lahunt, R., 292, 293, 294; Capt. Charles H. West, R., 140, 143, 144.

The following witnesses, testifying in regard to periods from 1894 to 1897, said there was no island existing opposite Willow Point, or in Albermarle Bend: Capt. Geo. Prince, R., 25, 26, 33, 34; Capt. W. H. Reed, R., 110, 120, 121, 122; Ernest Newman, R., 54, 55, 57; George R. Newman, R., 73, 74.

Channel East of Tullos Island, Prior to 1894.

As defendant contends in its brief that the channel went around to the east of Tullos Island prior to the survey of the Mississippi River Commission in 1894, and that what complainant calls Newman's Towhead is really Tullos Island, and has been since prior to the survey of 1894, in so far as defendant is concerned, it matters very little what happened subsequently to that date, for the reason that there must have been

an avulsion, through Mississippi territory, at the point involved, prior to 1894, for defendant to recover. There was no avulsion between 1894 and 1912-1913, or any contention that there was.

If defendant is right in its contention that the channel went east of Tullos Island after 1882 and prior to 1894, and that Tullos Island built by accretion westward to Louisiana, the subsequent changes to 1913 are wholly immaterial to its case.

If the evidence shows such not to be the fact, then the subsequent changes are likewise immaterial to defendant's case.

For the property in controversy to be Mississippi territory, there must have been an avulsion at the point in controversy, prior to 1894.

There are only two periods that defendant suggests such possibility, one at some indefinite time prior to 1882, and the other between 1882 and 1894, when it claims that the channel cut around to the east of Tullos Island, leaving Tullos Island intact.

If the Court is satisfied that the preponderance of the evidence negatives both contentions, it must decide in favor of complainant.

Estoppel.

Defendant contends that the sovereignty of the State of Mississippi has been recognized by the State of Louisiana over the property in question, and therefore that even if its contention is not correct as to

the boundary line, that complainant has estopped itself from disputing that the boundary line is as contended by defendant.

When the defendant sets up the plea of estoppel, it becomes a plaintiff, for that purpose, and the burden of proof is upon it to make good this special defense.

This principle that defendant is contending for is based upon the idea that where one State knowingly permits another for a great length of time to remain in continuous, uninterrupted, peaceable, public and unequivocal possession as owner of a part of its territory, exercising dominion thereover, and defendant's rights are acquired thereunder, the State so permitting same will not thereafter be heard to say that such property did not belong to the State so exercising dominion.

The facts in this case are that Newman's Towhead was on Newman's Bar, adjoined to the Willow Point Plantation belonging to Walter R. Newman; that it was called Newman's Towhead because it was owned by Mr. Newman; that Mr. Newman had actual possession thereof and pastured his cattle thereon, and until after the avulsion of 1913 the witnesses had never heard of any one in Mississippi claiming the ownership of said property. The testimony shows that R. F. Learned & Son, owners of Willow Point under a Louisiana title, leased this property to Laurence Townes for a number of years.

The fact that property occupying the location that Tullos Island and what was formerly Mississippi

property once occupied, but which in fact had washed away, and the locality covered by Louisiana property was still assessed in Mississippi and sales still made in Mississippi as Mississippi territory, could have no possible bearing, when the citizens of the State of Louisiana were exercising actual and sole dominion over the property, without any knowledge on their part of such assessments and sale in Mississippi.

There is no evidence to show that either the State of Louisiana, or any of its citizens, knew of such assessments and sales, and in order for them to have recognized the title of Mississippi to this property, they must have had knowledge of such facts and acquiesced therein, and the burden of showing that is upon the State of Mississippi, which it has not discharged.

It is said that a drowning man will grab at a straw, and this principle seems applicable in this case, and shows to what desperate straits the defendant is driven. There is nothing in this contention.

In conclusion, complainant contends that it has established that the boundary between the States of Louisiana and Mississippi at the point in controversy, as shown by the record, is the old channel of the Mississippi River, which was abandoned as a result of the avulsion of 1912, and that the boundary in said old channel was changed eastwardly by accretion to Newman's Towhead, after the avulsion, as long as the water continuously flowed through said abandoned channel.

Complainant prays that your Honors so hold, and that you appoint a commission to ascertain and mark the said boundary line.

Respectfully submitted,

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JUN 3 1929
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 6 ORIGINAL

IN EQUITY.

THE STATE OF LOUISIANA, *Complainant,*

versus

THE STATE OF MISSISSIPPI, *Defendant.*

SECOND SUPPLEMENTAL BRIEF OF STATE OF LOUISIANA, COMPLAINANT.

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United States v. Texas, 40 L. Ed., 867.
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West Virginia v. Maryland, 54 L. Ed., 645-660.
White v. Leovy, (La.) 49 A., 1660.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 9, ORIGINAL

IN EQUITY.

THE STATE OF LOUISIANA, *Complainant,*

versus

THE STATE OF MISSISSIPPI, *Defendant.*

SECOND SUPPLEMENTAL BRIEF OF STATE OF LOUISIANA, COMPLAINANT.

SYLLABUS

1. The general rule as to boundary lines between States is, that long acquiescence by one State in the actual occupancy of a part of its territory adjacent to another State, by such other State, under a claim or right, and with exclusive dominion and authority over it, with full knowledge of such by the other State, in conclusive of the boundary line between them.

See cases on preceding page.

2. No act affecting real estate shall have any effect against third persons until the same is deposited for re-

cord in the office of the Parish Recorder, of the Parish where such immovable property is situated.

Louisiana Civil Code, Article 2264.

3. All sales of immovable property which shall not be so recorded, shall be utterly null and void except between the parties thereto.

Louisiana Civil Code, Article 2266.

Generally the same rules as to boundary between individuals apply between States.

Rhode Island to Massachusetts, 9 L. Ed., 1233.

4. However, the rule that for a riparian proprietor to own alluvial additions, same must begin at the bank, does not prevent the State of Louisiana from owning islands formed West of the Channel.

5. Where the rightful owner is in the actual occupancy of a part of his tract, he is in constructive possession of the whole, unless some other claimant is in actual possession of some other part of the same tract. Where two persons are in actual possession of different parts of the same tract, each claiming to own the whole, the constructive follows the legal title.

Deputron v. Young, 33 L. Ed., 930.

CLAIM OF DOMINION AND SOVEREIGNTY OF MISSISSIPPI WITH ACQUIESCENCE OF LOUISIANA

Defendant alleged in paragraph six of its answer, that at all times since 1817, said lands have been *claimed* by the State of Mississippi, have been *assessed* with taxes

by the State of Mississippi; *and the owners thereof have at all times recognized the sovereignty of the State of Mississippi thereto.*

This paragraph, taken in connection with the allegation in the same paragraph of the answer, that the land in dispute *has been Mississippi territory since the organization of the State* in 1817, necessarily means that *the Mississippi owners,* or those claiming title under the State of Mississippi, have at all times *recognized the sovereignty of the State of Mississippi.* (This could not bind Louisiana.)

There is an allegation in the same paragraph of the answer that not until a short time before the bringing of this suit, did the State of Louisiana *make any claim to said lands.*

This is true in so far as making any claim *against the State of Mississippi is concerned,* prior to the cut off of 1912, as Louisiana was in the actual occupancy as owner of the land in dispute, without any claim whatever from Mississippi, or any of its citizens, there was no reason why Louisiana should make a claim against Mississippi, or its citizens, for something that Mississippi had never *possessed* or *claimed.*

There is no allegation in the answer that Louisiana, or its citizens have ever recognized the sovereignty of the State of Mississippi, or acquiesced therein.

There is no evidence in the record of any fact which would show that Louisiana recognized the sovereignty of the State of Mississippi over the land in dispute, or in any way acquiesced in its jurisdiction, or had any evidence of a claim of jurisdiction by Mississippi, until Mr.

Etna J. Albrittain, one of those at present claiming ownership, just before this suit was filed, made claim to the land.

The only way the contention that Louisiana has recognized the sovereignty and jurisdiction of Mississippi could have any effect in aiding Mississippi to hold the territory in dispute, would be on the theory that Louisiana had the legal title to the land, but had lost it by permitting Mississippi to occupy the land, and exercise its sovereignty and jurisdiction over same, and by the acquiescence of Louisiana therein for such a great period of time it had estopped itself from claiming said land, or that it had lost same by prescription.

The plea of estoppel by acquiescing in an existing state of facts, is a special defense, and must be pleaded or the courts will not notice such contention.

The same is true of a plea of prescription.

We think, as there are no such pleas in this case, the Court should pay no further attention to same.

It cannot be said that the pleadings have been broadened by the introduction of evidence without objection, as the only evidence that could even remotely be claimed to have such effect is the assessments, tax sales and patents from Mississippi; and these could not have such effect, as they were admissible on other grounds. They were admissible as going to show that Mississippi claimed title to the lands, the rule being that where evidence is admissible on any ground, it does not have the effect of broadening the pleadings, by being introduced without objection.

Complainant submits that special issues require spec-

ial pleas, and cannot be injected into a cause solely in briefs and arguments of counsel, as is attempted to be done in this case.

Let us examine the facts as to dominion, possession and control of the territory in dispute.

To keep the court from getting the facts confused on this particular issue, we call attention to the fact that Scrugg's Island, or Tullos Island, afterwards called Island 98, once existed; that it was under dominion, possession and control of Mississippi and was Mississippi territory. Mississippi contends this island never disappeared, but after washing away considerably, the river ran around it, and it then made by accretion out in the old bed of the river until it connected with the Louisiana shore. If this contention has been established, then Louisiana never had title, and the question of Louisiana losing its title by permitting Mississippi to take and maintain possession and control, could not arise; but if Louisiana's contention that the island entirely washed away, and that the accretions to Louisiana have extended out and over the location where the said island once existed, then there could be no grounds for the contention that Louisiana had lost its title by acquiescing in the possession, dominion and control which Mississippi had taken of this Louisiana secretion, *as it never took any possession of it.*

The question then, on this particular issue, for the Court to decide is:

"Did Mississippi Take Possession and Control of This Accretion, with the Acquiescence of Louisiana?

Let us examine the record for the facts.

Mr. I. B. Beard, (T. B. Beard in Record) said: "I had never heard of any part of this land being claimed by Mississippi *before I was a witness in the case.* (1926.) R. 90.

The Newman heirs were regarded as owners of the property. R. 90.

Mr. Ernest Newman said his family claimed Willow Point and Newman's Towhead. Newman's Towhead got its name from the Newman family; it was considered to belong to his father. "We had cattle running on it—a cattle range on it."

They paid their taxes in Louisiana and paid none in Mississippi. R. 53.

While they paid no taxes on this accretion, it was not assessed.

George R. Newman said the Newman house was *about* 100 *yards* from what he called the main land; *it was outside the levee* next to the river. R. 67.

He never heard of Newman's Towhead or any part of Willow Point being claimed by Mississippi, until since this suit began. R. 70.

No part of Newman's Towhead was in cultivation prior to 1912, the time of the cut-off. R. 72-73.

Lawrence Towns said he knew the Newman place over in Louisiana. * * * "They just calls it *Newman Towhead.*" He leased it from Mr. Learned. R. 224.

His lease was offered in evidence; it was of a tract of land in *East Carroll Parish, La.*, containing about 2000 acres, more or less, being what is now known as *Newman's Towhead, with accretions,* and being a part of the Belle and Willow Point Plantations, in said Parish. R. 226.

He leased from Mr. Learned for six or eight years. R. 226.

This lease was made after the cut-off (1912.) R. 228.

He did not cultivate any part of the Towhead; but dropped some corn in cracks, and it came up and the hogs ate it; he had 800 or 900 head of hogs over there. (On the Towhead.) R. 227.

Mr. Learned leased Towns this property *to keep others off of it* Towns said: "That is what he told me, by word of mouth, *to keep everybody off of it.*" R. 241.

While it is thus shown persons claiming the ownership under Louisiana title, of the property, *had the actual physical possession* and occupancy thereof until a short time prior to the bringing of this suit, there is not a word in the record to show physical possession or occupancy of any of said property, by Mississippi claimants, since Island 98 caved away, about 1893.

It is true that the Newmans had no deed to the Louisiana alluvion formed by accretion, *but they needed none;* they had a deed to the property bordering on the river, and owned the property in dispute as an accession, by virtue of their riparian proprietorship.

The riparian proprietor does not get a new deed from the United States Government, or the State, to the accretions formed by alluvion.

The accretions are *accessory rights,* attaching exclusively to the riparian estate.

The right to these alluvial formations is a vested right, *inherent in the riparian ownership* of the land to which it attaches.

White vs. Leovy, 49 A., 1660.
State vs. Buck, 46 A., 656.

Suc. Delachaise vs. McGinnis, 44 A., 1043.
Meyers vs. Mathis, 42 A., 471.
Municipality No. 2 vs. N. O. Cotton Press, 18 La. 122.

There is no doubt that in the early eighties, about 1882, Tullos Island, or Island 98, which was sometimes called Scrugg's Island, and which was then Mississippi territory, was actually in possession of a man by the name of Scruggs, and that part of it was cultivated and that it had a gin on it, but this possession seems to have been abandoned before the Island all caved away.

There is not a word that complainant can find in the record to show any possession by any one claiming under Mississippi of this island after 1886.

Wm. Miller said Scruggs was on the island in 1886. R. 308.

Mr. Foster said there had been no gin on the island for a long time. R. 211.

The gin was there in 1882. R. 215.

He does not say that he was closer than within two miles of the Island *after* 1882.

Complaintant has shown by I. B. Beard and the two Newmans, actual possession of the property in dispute, Willow Point and Newman's Towhead, until 1907, when the Newmans disposed of the property. R. 53-67-70-77-79-90.

Mr. Learned, under Louisiana title, was in the actual occupancy and possession thereof, after the cutoff in 1912, for six or eight years, through his tenant, Lawrence Towns, and that possession *was exclusive*. R. 224-226-227-228-241.

The fact is while Scruggs was in possession of Tullos

Island, or Island 98, Mississippi territory in 1886, that island is shown to have washed away and to have entirely disappeared, and the channel of the river to have passed over its location, and the property in dispute is accretion from Louisiana, partly over the place formerly occupied by said island; that the land assessed, or sold in Mississippi, prior to the Spring of 1893 or 1894, the time when the island washed away, can have no bearing on the question now being discussed; that is the acquiescence by Louisiana in the dominion and possession of Mississippi of the territory in dispute, for the reason that as long as any of said island was left, it was Mississippi territory and no claim was made to it by Louisiana. After the island disappeared in 1893 or 1894, the Louisiana accretions had made over part of the former location of the island, attempted assessements made in Mississippi, after said date, of the land by sections, townships and ranges, of the former island, which did not then exist, *was not an assessment of the accretions,* which had made out from Louisiana, as same had never been surveyed, and had no section number or township. It was simply a perfunctory continuance of assessment by the State of Mississippi of land which before the same caved into the river had been a part of Mississippi, but which no longer had any existence. It was an assessment of land that had no existence and therefore means nothing.

By reference to Complainant's Exhibit "A," Willow Point was in Township 19 North, Range 14 East, Louisiana; unless the accretions extended easterly from the eastern side of said range line more than six miles, it would be in the same township and range as Willow

Point. If it extended East, more than six miles, such part would be in Range 15, *Louisiana*. Again, if any part of the accretions extended North beyond said township line, such part would be in township 20, *Louisiana;* provided a survey was made of said accretions, while all the land defendants claimed to have assessed, purported to be in township 9 North, range 8 West, of Mississippi.

Complainant's contention is that none of this Louisiana property was ever assessed, or sold at all by the purported assessments, and sales in Mississippi, and that even if Louisiana had notice of such purported Mississippi assessements and sales, which it did not have, it would not bind Louisiana.

The only notice to Louisiana, or its citizens, affecting real estate, is notice by record in the Parish where the land is situated.

Actual knowledge of any record affecting real estate, where that record is not in the Parish where the land is located, is not legal or binding notice.

> Louisiana Civil Code, 2264-2266.
> Gonsolin vs. Sparrow, 150 L., 107.
> And many cases.

If Mississippi, or its citizens had been in the actual possession of this Louisiana accretion, claiming and acting as owners, this might have started the current of prescription to run, and if such possession and claim had lasted sufficiently long, and had been set up by defendant in its pleadings, and established by proof, there might have been some reason for defendant to claim the acquisition of territory, by the dominion of defendant with the knowledge and acquiescence of Complainant: *but nothing of this kind existed.*

Defendant's contention, when laid bare by the facts, is simply this:

That Louisiana territory can be acquired by an assessment and sale in Mississippi, without the alleged purchaser taking possession, and without any knowledge of such assessment, or sale by Louisiana, or its citizens.

No court in Christendom will pay any attention to such contention.

There is neither allegation nor proof in the record, that either Louisiana, or the owners of the Louisiana territory in question, had any actual notice of the alleged assessments, or sales, and it is certain such notice would not be presumed.

It is a fact that accretions are not usually assessed in Louisiana, unless they are sold, when the assessor has some basis to act on; before then he would not know the description, acreage or value. Defendant claims the law requires an assessment. Suppose it does. The fact is well known to every resident on the Mississippi River, that such is not generally done.

These accretions are of various shapes and sizes, and have no value until timber grows upon them.

Until the last thirty five or forty years, the class of timber that grows on accretions had no value, and it is only in recent years that it has much value.

Whether these accretions were assessed by Louisiana, or not, as *Mississippi did not occupy or possess same*, would be no ground for Mississippi to claim the territory by virtue of its having exercised dominion and sovereignty over same.

If such were true, Mississippi could thus acquire any lands in Louisiana that she happened to find off the

assessment rolls in Louisiana, *simply by placing same on the assessment rolls in Mississippi, and then selling it for non-payment of taxes.*

Complainant, neither in its original nor first supplemental brief, devoted much space to this contention, as it did not regard same as an issue. The only reason it now discusses this question at length is because the Master, to whom this case was referred, seemed to think there might possibly be something to this contention.

Let us now examine and analyze the decisions of the Supreme Court, bearing on the acquisition by one State, or territory, of another, by the dominion and sovereignty of the one State over the territory of the other, with the knowledge and acquiescence of the latter State. It will appear *that none of them* have the slightest application to the facts of this case.

The Montgomery Plantation Map of East Carroll Parish, Louisiana, introduced by the Defendant, does not puport to be a map of surveys made at the time. On its face it shows that it was merely platted on original government surveys made many years before, and therefore does not show accretions or other changes in shore-lines or in the river which occurred subsequent to the original government surveys. It is manifestly a map intended only to show relative locations and coterminous boundaries of plantations in East Carroll Parish for general purposes. Its errors and omissions are manifest when compared with maps of actual serveys of the situs in quo made by the best of all authorities, the U. S. Government Engineers, acting under authority and direction of the Mississippi River Commission. * * * This map is

not admissible in evidence and its admission was objected to by Complainant. See Record, pages 300-301.

ANALYSIS OF JURISPRUDENCE ON DOMINION AND SOVEREIGNTY

As to boundary line between States, the general rule is, that long acquiescence by one State, in the actual *occupancy* of territory by another under a *claim of right,* and in the exclusive exercise of dominion and sovereignty over it, with full knowledge of the other State, is conclusive of the rightful authority.

In most of the cases of disputed boundary, the line had been fixed by agreements based on surveys, and rights acquired by actual occupancy up to said line, and held for many years to said line under title from the respective States. In such instances it has been held, the line would be conclusive of the rightful authority though not exactly correct.

We have examined carefully the following cases, showing the facts on which the decisions rested:

(1927) New Mexico vs. Texas, 72 L. Ed., 127, pamphlet 4.

(1926) Oklahoma vs. Texas, 71 L. Ed., 145-156.
(1926) Michigan vs. Wisconsin, 70 L. Ed., 595-601-603.
(1924) New Mexico vs. Colorado, 69 L. Ed., 499.
(1917) Arkansas vs. Tennessee, 62 L. Ed., 649.
(1909) West Virginia vs. Maryland, 54 L. E., 645-660.
(1905) Louisiana vs. Mississippi, 50 L. Ed., 913-934.
(1895) United States vs. Texas, 40 L. Ed., 867.
(1893) Virginia vs. Tennessee, 37 L. Ed., 537-544.
(1889) Indiana vs. Kentucky, 34 L. Ed., 336.
(1889) Deputron vs. Young, 33 L. Ed., 923-930.
(1887) Coffee vs. Groover, 31 L. Ed., 51.

(1846) Rhode Island vs. Massachusetts, 11 L. Ed., 1117.

(1838) Rhode Island vs. Massachusetts, 9 L. Ed., 1233-1264.

We now take up each of the above authorities and consider them seriatim:

(1927) New Mexico vs. Texas, 72 L. Ed., 127, No. 4. (Justice Sanford, Estopped or Prescription Held Good.)

Facts—New Mexico alleged the boundary was as it existed by virtue of a compact between the United States (while New Mexico was a territory) and the State of Texas, on the 9th of September 1850.

It further alleges where said location of 1850 was.

Texas admitted the boundary was as it existed September 9th, 1850, but that the location of such line was not as alleged by New Mexico.

Texas also set up where the location of the line was in 1850.

Congress passed a joint resolution in August 1911, that New Mexico should be admitted *subject to the "terms and conditions of"* the Joint Resolution of February 1911.

Said Joint Resolution of February 1911 declared that any provision of the Constitution of New Mexico that tended to annul or change the established boundary between the territory and the State of Texas as run by Clark in 1859 *and* 1860, shall be of no force and effect.

The Master had found, and the court held, that the boundary claimed by Texas as the boundary of 1850, was practically the same as the Clark line boundary.

Prior to the admission of New Mexico as a State, January 6th, 1912, Texas had issued patents to *practically*

all of the land in dispute and the patentees went into *physical possession thereof and so remained.*

The boundary line claimed by Texas, *had been tacitly recognized for more than half a century, and New Mexico expressly declared in its Constitution that the boundary ran "along the 32nd degree paralled to the Rio Grande, as it existed on the 9th of September*, 1850, *thence following the channel of the river as it then existed on the 9th day of September*, 1850.

The Master found all of the above facts, but held that as the river had after 1850 changed its channel by accretion, that the line changed.

Texas *filed an exception* to so much of *the Master's report* as declared the boundary had been changed by accretion.

The Court held the boundary line of 1850 as claimed by Texas was substantially correct; and that "this case is not one calling for the application of the general rule established (in various cases cited) as to changes in State boundary line caused by gradual accretions on a river boundary."

(December 1927) New Mexico vs. Texas, 72 L. Ed., 127, pamphlet No. 4.

In the above case the line was fixed by compact, and it was only a question of locating it.

The Court merely held in a case of that sort, that the doctrine of accretion had no application. In addition, Texas had been in actual occupancy of the disputed territory, with full knowledge and acquiescence of the United States, while New Mexico was a territory and with full knowledge and acquiescence of New Mexico after it became a State.

The facts of the above case can have no bearing on the case now before the Court, on the question at issue.

(Justice Sanford) (Estoppel or Prescription *Not* Sustained) 71 L. Ed., 156.

The general principle of public law, that as between States *long acquiescence in the possession* of territory under a *claim of right*, and in the exercise of *dominion and sovereignty* over it, is conclusive of the rightful authority. (However in this case, the estoppel, or prescription was not sustained.)

Oklahoma vs. Texas, 71 L. Ed., 156.

In Oklahoma vs. Texas, 71 L. Ed., 156, the Court held: "It is plain that, under the circumstances, essential elements necessary to the establishment of a *prescriptive* right by an exercise of jurisdiction acquiesced in for a long period of years, are lacking."

In the same case, 71 L. Ed., 156, the Court further held: "Nor is the fact, as to which the parties have stipulated, that since the decision in the Green County case, the United States and the territory of Oklahoma in succession have continuously enforced *their civil and criminal laws, over the territory in dispute*, sufficient to establish Oklahoma's claim to the territory by prescription."

Of course, the above case can have no application to the facts of the case now before the Court on the question at issue.

(1927) (Justice Sutherland) (Estoppel or Prescription *Sustained*) 70, L. Ed., 595-601.

"The rule, long settled and never doubted by this Court, is that *long acquiescence* by one State in the *possession* of territory by another, and in the exercise of

sovereignty and dominion over it, is conclusive of the latter's title, and rightful authority."

Michigan vs. Winconsin, 70 L. Ed., 595-601.

In Michigan vs. Wisconsin, 70 L. Ed., 595, the boundary was established in three sections: Montreal River Section—Menominee River Section—Green Bay Section.

In the above case, 70 L. Ed., 600, the facts were about as follows: *Boundary in Montreal River Section.*

"In 1874, taxes were assessed and *collected* by Wisconsin, and by 1886 practically the entire area had been subject to such taxation. *During this time, towns were built, highways constructed, public buildings erected, elections held,* Wisconsin law enforced, and other customary acts of dominion and jurisdiction exercised by that State within the disputed area."

From the foregoing facts and circumstances, the conclusions are inevitable that the description in the Michigan Enabling Act of the line from the mouth of the Montreal to Lake Desert was inserted under the mistaken belief that the river connected with the lake; that this mistake was discovered as early as 1841, *of which discovery Michigan long prior to the admission of Wisconsin, had knowledge;* that the line as now claimed by Wisconsin, was surveyed and marked by Cram and Burt, at the dates already stated; that *Michigan, not only assented to the result of these surveys, but actively participated in securing the insertion of the description of that line, in the Wisconsin Enabling Act,* and herself substantially adopted it by the Constitution of 1850, and that *for a period of more than sixty years she stood by without objection with full knowledge of the possession, acts of dominion, and claim and exercise of jurisdiction*

on the part of the State of Wisconsin over the area in question."

Under the above facts, the State of Michigan was held bound by her recognition of the boundary line.

The facts in the above case certainly can have no bearing on this suit.

In Michigan vs. Wisconsin, 70 L. Ed., 601—The Menominee River Section, the facts were about as follows:

In the Wisconsin Enabling Act, 1846, the evidence is pretty clear that a change in description was made in the boundary, "as part of a general readjustment of the boundary." * * * It contained a provision, "that to prevent disputes as to jurisdiction, the line shall be so run as to include within the jurisdiction of Michigan, all islands in the Brule and Menominee, down to and including the Quinnesee Falls of the Menominee; and thence so as to include within the jurisdiction of Wisconsin, all islands in the Menominee below the Falls."

Since this Enabling Act, (1846) Winconsin has *asserted* and *exercised dominion over the islands*, as set forth in the Wisconsin Enabling Act. The Court said:

"We therefore hold as to this section of the boundary, that from Lake Brule to the mouth of the Menominee, the line which is now fixed and finally established by long acquiescence, follows the channel of the Brule and Menominee wherever they are free from islands; that wherever islands are encountered above Quinnesee Falls, the line follows the channel nearest the Wisconsin mainland, so as to throw such islands into Michigan; and that wherever islands are encountered below the Quinnesee Falls the line follows the channel, nearest the Michigan mainland, so as to throw such islands into Wisconsin.

In the above case the Court held the evidence was pretty clear that the line claimed by Wisconsin was established by agreement; that Wisconsin claimed and exercised jurisdiction over the territory; and that Michigan had long acquiesced therein.

Such facts can have no bearing on the present case, where there is no similarity in the facts.

In Michigan vs. Wisconsin, 70 L. Ed., 603—The Green Bay Section—the facts were about as follows:

In the Michigan Enabling Act, the boundary was recited to be down the Menominee to "the center of the *most usual ship channel* of the Green Bay of Lake Michigan; thence through the center of the most usual ship channel of the said bay, to the middle of Lake Michigan.

There were two ship channels, either of which could apply.

"The title of Wisconsin to the disputed area is established by *long possession* and *acquiescence;* and this conclusion is justified by the evidence, and by concessions of the most substantial character. * * * Almost from the day of her admission, the State (Wisconsin) has continuously possessed, asserted title and exercised jurisdiction and dominion over all of the islands within the boundary claimed by her, Wisconsin's title held good."

In the above case, the occupancy of each State was to the channel claimed by Wisconsin as the boundary, with full knowledge and acquiescence of Michigan for many years. There are no such facts in the suit now pending, and the above case can therefore have no bearing on this suit.

(Justice Sanford) (Estoppel or Prescription *Sustained*) (69 L. Ed., 499) Except as otherwise shown for more

than thirty years, the Darling line, intended to be run along the 37 parallel of North Latitude, remained *undisputed*, and the correctness of its technical execution unquestioned; it had been recognized by the United States, and by the State of Colorado, by the territory of New Mexico, and by the State of New Mexico, except as otherwise indicated by the bringing of this suit, and has now been recognized by the Land Department as the boundary between Colorado and New Mexico; that from 1868 *to the present time* (1924) the territory, and later the State of Colorado, *has claimed* and exercised dominion and sovereignty over the territory down to the Darling line, and no farther; *that county lines have been formed, and settlements grown up, school districts, election districts, land districts and water districts have been* created with reference to said line; *public officers* have been elected, property assessed and taxes levied *and collected* under authority of the State of Colorado; and *its Courts of both civil and criminal jurisdiction* have exercised jurisdiction in all places *north of said Darling line;* and the territory and the State of New Mexico have exercised like jurisdiction in all places south of said line; *Government Post Offices have been established* as being in Colorado when North of said line, and as *in New Mexico when South of said line;* and *the public surveys on both sides of said line have closed theron;* lands have been disposed of, rights acquired, and political boundaries in both Colorado and New Mexico have been fixed by reference to said line. In addition, New Mexico adopted the Darling line in 1912, and recognized same until the filing of this suit; Held, that said line was the boundary re-

gardless of whether it was accurately run along the true Meridian line.

New Mexico vs. Colorado, 69 L. Ed., 499.

The facts of the above case are so extremely different from those of this case, we do not think defendant would contend they had any application.

Arkansas vs. Tennessee, 62 L. Ed., 638-1213. (Justice Pitney).

The decisions of Tennessee fixing the boundary line between the State and private individuals, *can have no effect against the State of Arkansas* which was a stranger to the record.

Arkansas vs. Tennessee, 62 L. Ed. 649.

The judicial department of Tennessee held the territory in dispute to be property of Tennessee. Arkansas did not acquiesce therein, it was no party thereto and was not bound thereby.

The Executive Department of Mississippi made tax sales, and issued patents, not of the land in dispute, but of alleged land in certain sections, townships and ranges, when same did not exist, but had washed away and parts of the place where such land once existed had been covered by accretions from Louisiana. No one from Mississippi ever took possession. The lands were accretions mostly covered by timber. No notice of said proceedings by the Executive Department of Mississippi was ever given to Louisiana, or alleged, or shown, and there was no acquiescence by Louisiana, and there could have been no acquiescence by Louisiana without knowledge of the existence of the facts. Such acts could no more bind Louisiana, than a decision of the Mississippi Court holding said lands to belong to Mississippi, could bind Louis-

iana, when Louisiana was no party to such decision. All of the assessments and deeds evidencing such acts are "res inter alios acta."

(1909) (Maryland vs. West Virginia) (Justice Day) 54 L. Ed., 645.)

West Virginia filed an answer and cross bill, in which she says the true boundary line, long recognized and established, is the one known as the "*Deakins*" line, and prays said line be established as the true line, between the said States (p. 649). This line was probably run in 1788 (p. 653.)

Maryland recognized this line in 1823, in making land grants. (p. 657.) Virginia for many years conveyed land with reference to *this line as the boundary line.* (p. 658.)

The people for many years have accepted and adopted this line (p. 658.)

West Virginia vs. Maryland, 54 L. Ed., 645-660.

In the above case, West Virginia claimed the Deakins line to be the true boundary line, and Maryland in sundry grants recognized it as the West Virginia and Maryland line, as far back as 1823. Roads were worked as a rule on the West Virginia side up to the Deakins line: Maryland worked the road on the other side of this line. On the West Virginia side, taxes were paid in West Virginia, and the people there voted in Virginia. As a rule, the schools established there were West Virginia schools. And the allegiance of nearly all of the people were given to West Virginia (p. 657.)

Under these facts the Court held the Deakins line to be the boundary, and a commission was appointed to locate and establish it.

West Virginia vs. Maryland, 54 L. E. Ed., 645-650.

The mere reciting of the facts of the above case shows that it can have no application in the present suit, where there is no similarity of facts.

(1905) Louisiana vs. Mississippi, 50 L. Ed., 913, C. J. Fuller).

In 1886 Louisiana passed an Act vesting control of oyster industry in the Parishes where situated. (p. 924.)

By Acts of 1896, non-resident fishermen were phobibited from fishing in Louisiana waters, and the dredging of oysters was also prohibited.

In January 1898, St. Bernard Parish equipped and sent out an expedition to exclude non-resident oyster fishermen.

Non-resident Mississippi oyster fishermen were found there and were notified that they must stop fishing, and move out of those waters. The Mississippians complained to Mississippi authorities and a conference followed between authorities of St. Bernard Parish and Hancock County.

In 1901 a meeting of State officials was held in New Orleans, resulting in the appointment by the Governors of each State of a commission to try to settle the boundary dispute Louisiana presented a conference map showing Louisiana's contention, and Mississippi reported it was impossible to make an amicable extra judicial sttlement.

In 1902 Mississippi placed control of the oyster industry of Mississippi in the hands of a commission, and were authorized to maintain patrol boats to maintain the oyster laws. (p. 924.)

In July 1902 Louisiana also created an oyster commis-

sion, authorized to maintain an armed patrol on Louisiana oyster waters, and to protect her rights.

The oyster commissions of the two States established a neutral territory pending a decision of the Supreme Court.

By Act of Congress, of April 8th, 1812, additional territory was added to Louisiana. (pp. 925-926.)

The Act admitting Mississippi, was passed five years after the admission of Louisiana. (p. 927.)

By Act of Congress of May 12th, 1812, the boundaries of Mississippi territory were defined, by which she claimed the territory in dispute.

Louisiana contended that the territory in dispute was previously given to her by Act of April 8th, 1812.

"The contention of Mississippi is based on an assumed inconsistency between the Louisiana and the Mississippi Acts, but we think, upon a true interpretation, in the light of facts, no such inconsistency can be imputed." (p. 929.)

The Court further said:

"The record contains much evidence of the exercise of Louisiana jurisdiction over the territory in dispute, and the general recognition of it by Mississippi as belonging to Louisiana.

Apparently Louisiana had exercised complete dominion over it from 1802, with the *acquiescence* of Mississippi, unless the fact that the latter made a general reference to islands within six leagues of her shore in her Code of 1880 indicated otherwise.

But the evidence fails to satisfy us that she attempted

any physical possession or control after 1900. The disputed territory held to belong to Louisiana.

Louisiana vs. Mississippi, 50 L. Ed., 934.

It will be seen that the above case did not rest upon the exercise of *Jurisdiction* or *dominion* to *acquire territory*, but that the Acts of Congress gave the territory to Louisiana, and that Louisiana merely exercised dominion over the territory it owned.

The above case, therefore has no application to the pending litigation.

(1895) United States vs. State of Texas, 40 L. Ed., 867. (Justice Harlan.) (*Estoppel Not Sustained.*)

The designation for a short time of a postoffice, as in Green County, Texas, on petition of persons describing themselves as residents of such County, before the authorities of the Portoffice Department discovered that it was located in the territory which was in dispute between the United States and Texas, does not strengthen the claim of Texas to such territory.

United States vs. State of Texas, 40 L. Ed., 867.

Of course the above case can have no bearing on this litigation.

(1893) Virginia vs. Tennessee, 37 L. Ed., 537-544.—(Justice Fields.)

Independently of the effect due to the compact as such, a boundary line between States, or Provinces, as between private persons, which has been *run out, located*, and *marked upon the earth*, and *afterwards recognized and acquiesced in by the parties for a* long course of years, is conclusive, even if it be ascertained that it varies somewhat from the courses given in the original grant; and the line so established takes effect, *not as an*

alienation of territory, but as a definition of the true and ancient boundary.

Virginia vs. Tennessee, 37 L. Ed., 544.

In above case, the bounary had been run out and marked, and recognized for many years by each State. The line set up by Tennessee was one run by Commissioners appointed by Virginia and Tennessee after they became States; by Virginia in 1800 and Tennessee in 1801, approved by legislation of both States in 1803; (p. 538.) This line was assented to by Congress. (p. 544.) Tennessee had merely exercised its jurisdiction and dominion up to the true line.

This is not a case where territory was acquired by prescription or estoppel.

(1889) Indiana vs. Kentucky, 34 L. Ed., 329.) (Justice Field.) Held: Long Acquiescence is *Conclusive of Title*.

The long acquiescence of Indiana in the claim of Kentucky, the rights of property of private parties, which have grown up under grants from that State, the general understanding of the people of both States in the neighborhood, forbid at this day, after a lapse of nearly a hundred years since the admission of Kentucky into the Union, any disturbance of that State in her *possession* of the island and jurisdiction over it.

Indiana vs. Kentucky, 34 L. Ed., 336.

In the above case, Kentucky had had actual and exclusive occupancy of the island, under a claim of right for nearly one hundred years, and the facts show it was actually within the boundary of Kentucky, applying the rules applicable to avulsions to islands, where the channel changed from one side to another.

In addition, Indiana had constantly recognized such boundary by its acquiescence in the occupancy, jurisdiction and dominion of Kentucky.

The facts of the above case have no application to the pending case.

(1889) Deputron vs. Young, 33 L. Ed., 923. (C. J. Fuller.)

Where the rightful owner is in the actual *occupancy* of a part of his tract, he is in the constructive and legal possession and seizin of the whole, unless he is disseized by *actual occupation* and *dispossession;* and where the possession is mixed, the legal seizin is according to the legal title.

Deputron vs. Young, 33 L. Ed., 930.

This case merely applied the rules relative to possession of a part of a territory, which is that if the rightful owner is in possession of a part of a continuous body of land acquired under one title, and no other claimant is in the actual occupancy of any other part thereof, his actual occupancy of a part, extends to him constructive possession of the whole. But if any one else is in the actual occupancy of any part of such tract claiming as owner, constructive possession of the other claimant, can not cover such part. That actual occupancy ousts constructive possession. That where two are in possession of parts of the same continuous tract, claiming as owners, there can be no constructive possession, but the possession is held to be in him who has the superior title, or as this is sometimes expressed constructive possession follows the superior title.

(1887) Coffee vs. Groover, 31 L. Ed., 51. (Justice Bradey.)

Grants of land made by a Government, in territory over which it exercises political jurisdiction de facto, but which does not rightfully belong to it, are invalid against the Government to which the territory rightfully belongs.

(Syllabus) Coffee vs. Groover, 31 L. Ed., 51.

The United States had made grants to Coffee of land in Florida; Coffee's title was not only on the grants but on a delimitation of title under a Treaty between the United States and Spain.

Georgia claimed that the line was different from that claimed by the United States and Florida, and North thereof.

Georgia granted the same land to Groover, which was North of the Watson line, which is claimed was the correct line. Georgians worked the road to the Watson line, and Floridians on the other side; as far back as the witness could recollect, Georgia exercised jurisdiction to the Watson line. People North of Watson line did jury duty and voted in Georgia; the wills of people dying there were probated in Georgia and their estates administered in its Courts; Georgia exercised jurisdiction to the Watson line, and people were tried for offenses in the Georgia Courts. Florida did not exercise any powers of Government North of the Watson line. (31 L. Ed., 54.) The State line was the Orr and Whitner line, North of the Watson line.

Groover's contention was first, that grants by a Government de facto, of parts of a disputed territory in its possession, are valid against the State which had the right. The Court held otherwise.

Referring to the case of De Lacroix vs. Chamberlain, 6 L. Ed., 742.

The Court said: "The first (proposition) is opposed to the cases which we have already cited in relation to Spanish Grants in Mississippi and West Florida, and to the case of Poole vs. Fleeger (9 L. Ed., 680). The land in controversy was between the Watson line and Orr and Whitner line.

Coffee the owner under the Florida title, and title from the United States, held to own the land."

(1846) Rhode Island vs. Massachusetts, 11 L. Ed., 1116. (Justice McLean.)

The lines were established by agreement. Even if mistake were proved it would not be disturbed after a possession of two centuries by Massachusetts, under an assertion of right, with the claim admitted by Rhode Island, and other Colonies in the most solemn form.

Rhode Island vs. Massachusetts, 11 L. Ed., 1117.

The above case is so clearly inapplicable to the facts in the present suit, as to need no further comment.

"No court acts differently in deciding on boundary between States, than on lines between separate tracts of land."

Rhode Island vs. Massachusetts, 9 L. Ed., 1264.

Subject to certain exceptions pointed out in the briefs of Complainant, the above rule is correct, but has no bearing on the question of prescription or estoppel.

AGREEMENT OF COUNSEL, JANUARY 1929

In the above numbered and styled cause, the counsel of Complainant and the counsel for defendant have made and signed the following agreement, to-wit:

1st, That in R. 175, it is admitted that witness, Capt. H. M. Marshall said:

"There was a swift current flowing down between the two islands, and a channel to the East of both islands. Without being able to say how wide it was, it was possibly 1000 feet wide, etc., instead of 100 feet wide, as transcribed in the record."

2nd, That the questions and answers of Capt. Chas H. West, as shown on pages 28, 29 and 30 of Complainant's First Supplemental Brief, be received in evedence herein, with the same effect as if he had been testifying as a witness.

That the following blue prints be admitted as evidence when certified to by Walter H. Hoffman, Secretary of the State Board of Engineers of the State of Louisiana, as correct copies of the original on file in the office of the State Board of Engineers, to-wit:

1st, Map showing changes in river bank and levee lines along the front of *Illavara and Villa Vista Plantations*, in the Parishes of East Carroll and Madison, Louisiana, from 1824 to 1889. * * * *** Prepared in office of the State Board of Engineers, New Orleans, La., Jan. 3rd, 1900. Scale 1:20,000.

2nd, *Map of the Alsatia, Salem, Villa Vista, Mascot Bend*, in the Parishes of East Carroll and Madison, Louisiana, showing levees built from 1866 to 1906, and bank lines of 1866 and 1899, prepared by request of Capt. G. M. Hoffman, U. S. A., from

the records of the office, by the State Board of Engineers, January, 1906. Scale 1:20000.

3rd, Blue print from original tracing, showing Louisiana bank line of 1866, at Willow Point and vicinity.

This agreement is signed in triplicate, in January, 1929.

The State of Louisiana.
By John Dale.

The State of Mississippi.
By Rufus Creekmore.

Discussion of Blue Prints Relating to Defendant's First Contention

On the blue print under discussion, it will be seen that the surveys of Louisiana bank lines of 1824, 1866, 1880, 1882, 1885, 1889, 1890, 1891, 1894, 1898, 1899, West and Southwest of Willow Point, but that these lines were not all extended North or East of Willow Point, but those of 1866 and 1882 were so extended.

Under agreement of counsel, January 1929, there is also filed in evidence, blue print of,

2nd, "Map of Alsatia, Salem, Villa Vista, Mascot Bend, in the Parishes of East Carroll and Madison, Louisiana, showing levees built from 1866 to 1906, and bank lines of 1866, 1899, prepared by request of Capt. G. M. Hoffman, U. S. A., from the records of the office of the State Board of Engineers, January, 1906. Scale 1 to 20000."

This blue print shows a gradual recession of the levee lines North and West of Willow Point from 1866 to 1900;

it shows the levee lines of 1866, 1868, 1871, 1880, 1881, 1882, 1884, 1887, 1888, 1889, 1890, 1899 and 1900.

It also shows the Louisiana bank line of 1866, both North and East of Willow Point, and also the bank lines of 1899 and 1913, the 1913 bank line also showing the cut-off of 1912-1913.

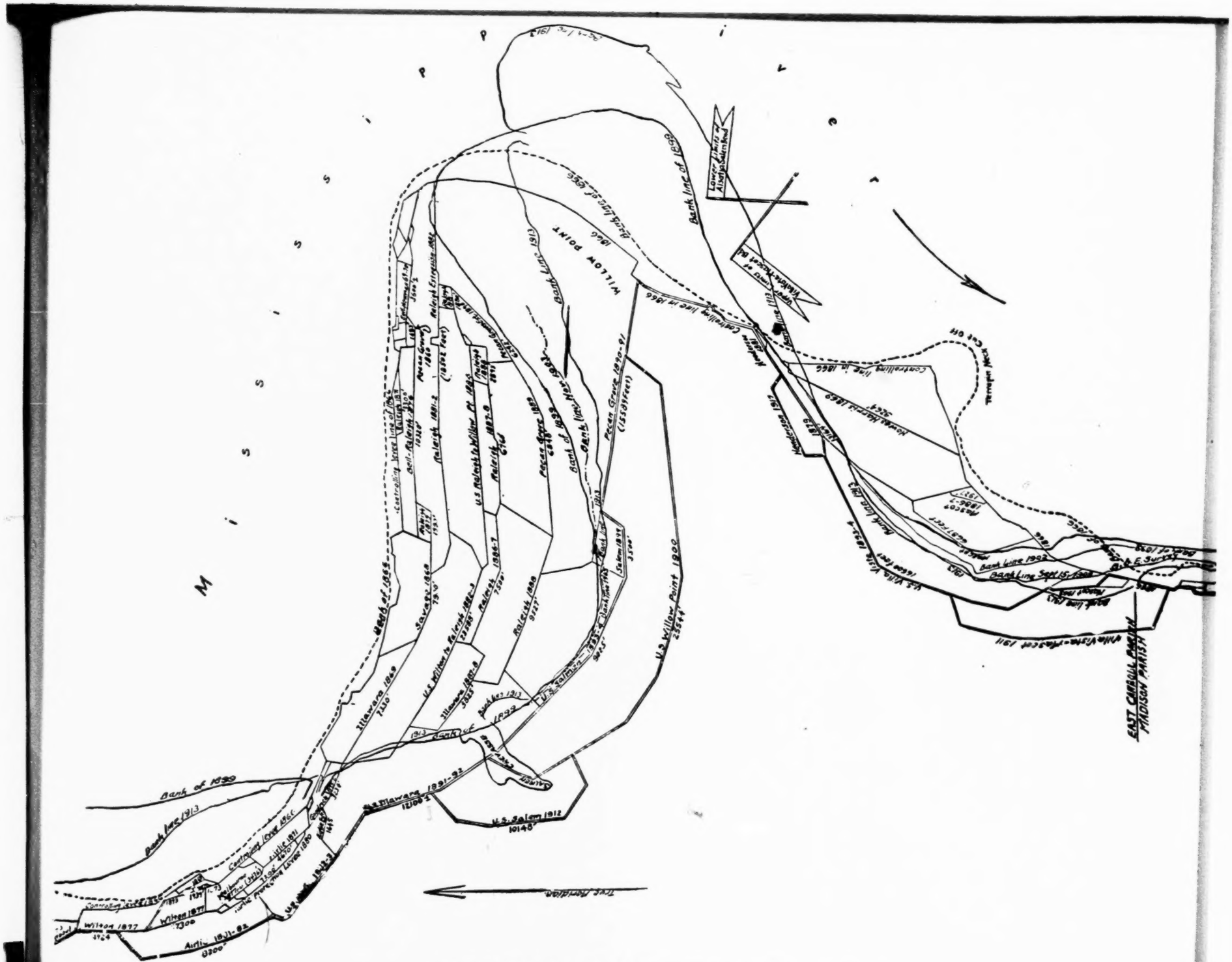
It shows that at the Northeast of Willow Point, the bank line of 1899 crosses the bank line of 1866, and which shows that at that point between 1866 and 1899, there could have been no avulsion of the river through Mississippi territory. It also shows that from said point South, the Louisiana bank line of 1899 gradually extended further East from the bank line of 1866. This shows that at the point where this extension began, it was jam up against the bank line of 1866, which necessarily makes the extension accretion.

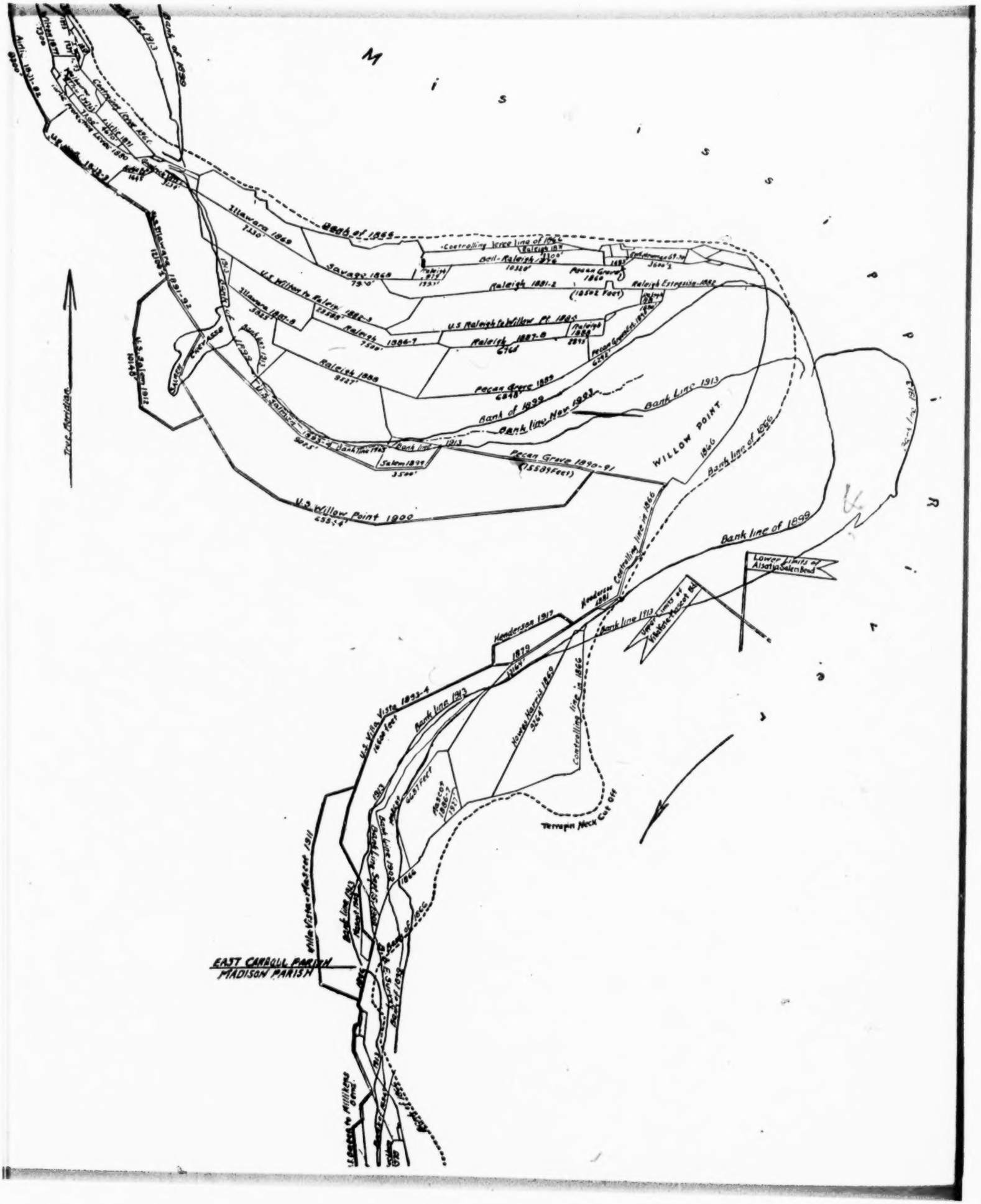
Discussion of Blue Prints
Further Answering Defendant's First Contention

In January, 1929, Counsel for the State of Louisiana and for the State of Mississippi agreed in writing that three blue prints should be filed in evidence. On one of the blue prints covered by this agreement of counsel, appears the following:

1st, "Map showing changes in river bank and levee lines along the front of *Illawara and Villa Vista Plantations*, in the Parishes of East Carroll and Madison, Louisiana, from 1824 to 1899, compiled from charts of the Mississippi River Commission 1882 surveys, surveys of United States and State Engineers, and from United States General Land Office maps, prepared in office of

Map of Illawara and Villa Vista Plantations


Mississippi
Bank line of 1838
Bank line of 1866
Willow Point 1866
Centerline 1866
Bank line of 1913
Bank of 1939
Bank line 1913
Bank line 1992
Bank line 1993
Bank line 1994
Centerline 1866
Centerline 1913
Centerline 1992
Centerline 1993
Centerline 1994
Centerline 1995
Centerline 1996
Centerline 1997
Centerline 1998
Centerline 1999
Centerline 2000
Centerline 2001
Centerline 2002
Centerline 2003
Centerline 2004
Centerline 2005
Centerline 2006
Centerline 2007
Centerline 2008
Centerline 2009
Centerline 2010
Centerline 2011
Centerline


Bank of 1929
Bank line 1913
Tillaware 1869
7330'
Savage 1868
7900'
Controlling levee line of 1882
Raleigh 1887
10320'
Cell-Raleigh 1900
Pecan Grove 1869
(18502 Feet)
Raleigh 1881-2
Raleigh Extension 1882
U.S. Willow Pt to Raleigh 1882-3
23350'
Tillaware 1881-8
3825'
Raleigh 1886-7
7500'
U.S. Raleigh to Willow Pt 1885
Raleigh 1887-8
Cell
Raleigh 1888
6298'
Pecan Grove 1889
6848'
Raleigh 1888
9287'
Bank of 1892
Bank line New 1923
Bank line 1913
WILLOW POINT
1866
Bank line of 1926
Pecan Grove 1890-91
(15589Feet)
U.S. Willow Point 1900
6585'4"
Bank line of 1849
Lower Limits of Alkatip Salem Bend
Henderson 1881
Controlling line in 1866
Henderson 1917
1879
Bank line 1913
Upper Limits of Alkatip Neck Cut
U.S. Villa Vista 1893-4
14600 feet
Bank line 1913
Howes Harris 1869
5164'
Controlling line in 1866
Terrapin Neck Cut off
Bank line 1913
Bank line 1913
Bank line 1913
Bank line 1913
Villa Vista-Rockport 1911
Bank line 1913
Bank line 1913
Bank line 1913
Bank line of 1866
EAST CARROLL PARISH
MADISON PARISH
Bank line 1913
Bank line 1913
Bank line 1913
Bank line 1913

State Board of Engineers, New Orleans, La., January 3rd, 1900, scale 1 to 20000."

All bank lines referred to on this blue print are Louisiana bank lines.

By an examination of blue print, it will be seen that the first *dash* line in front and East of "*Willow Point Plantation*" is the "bank line of 1824." It will further be seen that the *dotted* line in front and East of said Plantation is the bank line of 1866, and that the first solid line in front and East of said plantation bank is the bank line of 1882, and the next line in front of the 1882 bank line is the "sand bar, 1882."

Taking the various lines where the 32 degree, 36 minute North latitude, crosses through Pecan Grove Plantation, just South of Willow Point, it will be seen that the distance between the 1824 bank line and the 1866 bank line is seven-eights of an inch, or 513 yards, as will be seen from the table on page 10 of the first supplement brief of Complainant. At the same place the difference between the bank line of 1866 and 1882, is nine-sixteenths of an inch, or 420 yards, which is less than one-third the average width of the river, and therefore could not have included the channel of an avulsion through Mississippi. At the same place the sand bar line of 1882, had extended East beyond the bank line of 1882, more than three and one-quarter inches, being more than a mile East beyond the bank line of 1882.

This map also shows near the northeast part of Willow Point Plantation, the bank line of 1824, and the bank line of 1866 was exactly at the same point; that is where these lines cross, and from which point southward the

1866 bank line, gradually extended further east than the 1824 bank line.

This map also shows that a little South of the point where the 1824 and 1866 lines cross, the 1882 bank line crosses the 1824 bank line, and a little North of said point where the 1824 and 1866 lines cross, the "*sand bar line*" of 1882 crosses the bank line of 1824. All of which is at the North east part of Willow Point Plantation.

This map demonstrates that the 1866 bank line extended out from the 1824 bank line; that at one point the two lines were exactly at the same point, and that same gradually extended out. This destroys the theory of defendant, that at some period between 1824 and 1866 there might have been an avulsion at this point; and as the additions to the Louisiana bank line eastwardly, began at the bank line of 1824, and jammed up against the bank line of 1824, this conclusively shows the additions to be accretions.

There was no place for an avulsion; and if the bank at the northeast part of Willow Point was the same in 1882 as it was in 1824, and from said point southward the bank line of 1882 had gradually extended out beyond the 1824 line, it necessarily connected at said point, and the additions were necessarily accretions.

By an examination of the map attached to page 12 of defendant's brief, running from the survey of 1824 to the outer edge of the sand bar in 1882, each contour line represents a difference in elevation of five feet. Next to the timber on the Louisiana side the elevations is 105 feet, and this decreases, each contour line being 5 feet less, until the water's edge was reached, where the elevation was 75 feet. With the exception of a little de-

pression next to part of the main bank of 1882 the decline was in almost regular progression from 105 to 75 feet.

The depression mentioned did not extend all the way North to the river, and in its deepest part the elevation was 95 feet.

This gradual decline of the sand bar from the top of the bank to the water demonstrates that the additions were accretions.

Did River Run Around Tullos Island and Adjacent Island?

Further Answering Defendant's Second Contention. Eye Witness of Defendant.

Defendant only had three eye witnesses who saw Island 98, or Tullos Island, prior to 1894, and who say that it did not entirely cave away. Of these three witnesses, one is white and two are negroes, to-wit: R. E. Foster, white, Lawrence Towns and William Miller, colored. We will examine their testimony in the order named.

First: *R. E. Foster's testimony.*

He knew Island 98, or Tullos Island. Sometimes called Scruggs Island. He lived right across the river, three miles over the land. He had three places. The Island is in sight of the *lower place*. He had two places, called Arcadia and Forest Home; Forest Home is the lower of the two places. He did not live on his lower place; sometimes went there twice a day and sometimes once a week. Has *seen* Island 98 more than once a month. R. 208-209.

But he did not say he went near Island 98 once a month.

Mr. Purnell said, in answer to inquiry to how far Mr. Foster lived, "Is ten or twelve miles." R. 265.

Mr. Foster said if all the island (98) washed away, he did not see it. "It never all washed away." R. 209.

He said between 1882 and 1912, the river cut away the bank between his place and the island, but in this caving the Island did not wash away. But he did not say the channel passed between Island 98 and his place. He was not able to say how much of it was left. The river used to go up further west, over the upper part *around next to Louisiana.*

At one time there was some land on the island in cultivation and a gin on it. A man occupied it by the name of Scruggs. It was known as Scruggs Island. It was called two or three names. He did not know what the other was. In the nineties there was timber there when he *looked across* and saw the island from the best he could tell with the eye. It looked like it (the timber) might be forty or fifty feet high. R. 210.

This, therefore, could not have been old timber such as shown to have been on the island.

In 1882 he *thought* the river ran between the island and the Louisiana shore.

Asked if he knew of the cut off of 1912, he said the river changed there time and again. * * * That it is very wide; *sometimes a sand bar would show up in the center;* Sometimes on the Mississippi side; and sometimes on the Louisiana side.

Q. The river shifted there from time to time?

A. Yes sir, very often. R. 211.

But he did not say it ran between Island 98, or the bar in front of his place and the Mississippi shore.

He said when he went there, the river was between the island and the Louisiana shore, and was asked when it changed and came back between the island and the Mississippi (shore), replied: "*It has been doing that off and on.*" R. 212.

In other words, according to the witness, the river was first on one side of the island and then on the other, as he expressed it, "off and on." This, if believed, would contradict the entire record.

"When he went there in 1882, the channel of navigation was on the Louisiana side."

Comment: (In front of his house it may have been, but not in front of Island 98) it is on the Mississippi side now." That is true, but it is not behind Island 98, or any other Mississippi Island. It changed gradually. He said, "*My front caved off and as it caved off* it came on over to my side and is there now." That is true, but it swept every island out of the river, at the point in controversy on its way over.

Asked if he knew when the boats stopped running west of the island and began running east of it, said "I don't know *all of it*. It gradually occurred, every year, as far as that is concerned."

He knew his place was cutting away fast, but asked if he paid much attention to where the boats ran, answered, "*I did not.*" R. 213.

He did not know when they stopped running on the Louisiana side of the island, and began running on the Mississippi side. The little boats ran there first and after a while the big boats began to go through there.

Here he was evidently referring to the cut-off of 1912-1913.

Asked if he could give any idea when the big boats began running *next to the Mississippi* shore, said he could not because *in front of his place there was a big island there.* He evidently referred to the sand bar above island 98, which formed there evidently between 1870 and 1882. He recollected the *cut off* it made gradually year by year. The small boats ran through first and then the big ones. He could not recollect the size of the island when he first knew it. *It did not extend above his place. It was just across the river from his lower place.* R. 214.

This island was in front of both of his places. (This likely referred to high sand bar above Island 98. He did not know anything about the size of Island 98, in 1882. He did not know how long it was. He did not know how wide it was. He did not know anything about it. R. 215.

The island is *west* of his place. The channel has not filled between my place and the island. *The Mississippi River is there now.* He supposed the channel filled between the island and the Louisiana side. (He evidently is referring to Newman's Towhead.)

He knows the island caved. *The island is gone—the part next to me is gone*, and the river channel is there. R. 216.

This no doubt referred to the island, or high sand bar above Island 98, as Island 98 was a number of miles below his nearest place.

It (the channel) must be two or three miles wide between his place and the island. He can look *across* and

see the timber is the reason why he can tell there is an island.

The whole channel of the river is between the island and my place. (1926. He evidently refers here to Newman's Towhead.)

Asked if the only reason he had for knowing any island was left, was the fact that he could see timber a distance of two miles, replied, R. 217,

"Yes sir, and hunters being on the island. I have not been there myself." He would look *exactly west* from his place to see the timber, a distance of two miles, but he could not tell whether the timber he saw was on the Island, or main Louisiana shore. R. 218.

He said it would not have been possible for the island to have washed away and he not know it, as he had been there; but that was back in 1882. He bought the property in 1882, and had been there (at his place) from that time 'till this. R. 211. (But the testimony only shows he went near the Island one time.)

Comment:

We think Mr. Foster wanted to tell the facts as he understood them, but the trouble with his testimony is that in later years he knew but little about Island 98, or Tullos Island.

He seems very much confused in his statement regarding Island 98, the sand bar above, and Newman's Towhead.

He had three places. The island was in sight of his lower place. He did not live on this place. From the place he lived on he could not see the island.

There is no doubt that Mr. Foster had seen Island 98, or Tullos Island in 1882, or shortly after. The testimony

shows a man lived there by the name of Scruggs, who cultivated land on the island, and had a gin there. Mr. Foster was there on a steamboat, which put off freight there, and in 1882 the river ran between the island and the Louisiana shore.

These were unquestionably facts.

This was before the island caved away, and while Scruggs was there with his gin. There is no evidence to show that he ever made another trip down by the island; but he thought he could see the island, from his lower place, a distance of some two or three miles. He could look across and see the timber in the nineties, 40 or 50 feet high, and that is why he could tell there was an island.

That Island 98 was exactly west from his place.

By an examination of the chart in defendant's brief, at page 14, it will be seen that Mr. R. E. Foster's place was adjacent to Dunbarton Landing; but the Home Place, which had mostly caved in the river, was evidently further south toward Duvall's Landing. Island 98, or Tullos Island, or Scruggs' Island, was southeast of Mr. Foster's property, and not west.

The part of the sand bar which extended west of his place in 1882, as shown by the 1882 survey, had no trees upon it, and besides, this bar was less than a half mile from his place; it therefore, could not have been the upper end of this sand bar referred to by defendant as upper Tullos Island, that Mr. Foster referred to, for the reason Mr. Foster said the island was two or three miles distant, west and across the river from his place. He repeated twice, that Island 98 was west of his place; once he said it was *immediately* west; this we have

shown was impossible. When he said this, he was not talking about Tullos Island, or Island 98, or Scruggs' Island. He was evidently talking of Newman's Towhead which was Louisiana territory, as it was west. As Hopkins Island had disappeared, or if it had not all disappeared in 1882, the little that was left was incorparated with Willow Point, he could not have referred to Hopkins Island, except as possibly a part of Willow Point. He said the channel of the river must be two or three miles wide. The whole channel of the river was between the island and his place. He could only tell that it was the part of the island that was left (Island 98), by looking across and seeing the timber, but he could not tell whether the timber he saw was on the island, or on the main Louisiana shore. The fact is he knew very little about it.

As the evidence conclusively shows that up to 1890, the channel of the river was west of *Tullos Island*, and the *long sand bar above*, shown on the charts of 1882, and that the chute between them and the Mississippi was only 1,000 feet wide. (R. 173-175.)

This was only during high water, as in low water a skiff could not get through there. R. 309.

The channel never did go there during that time (which covered the period mentioned by Capt. Marshall to 1890); at that time "during low water you could walk across from the Mississippi shore to the island. R. 314-315.

Mr. Foster's reference could not be to either of them; especially as he said in the nineties he looked across (the river two or three miles distant) and saw the is-

land, (and) from the best he could tell with the eye, the timber might be 40 or 50 feet high; R. 210,

but later admitted, on cross examination, that he could not tell whether the timber he saw was on the island or on the main shore of Louisiana, (R. 218), nor the height of the timber. (R. 218.)

From his testimony the channel changed back and forth a number of times, at this place. He said it changed there time and again. At another time he said, "the island is gone, that is the part next to me is gone, and the river channel is there."

It is evident from his whole testimony that it had been many years since he had been near Island 98, and that the island he referred to as "gone" was the high sand bar above Island 98.

Is such indefinite and uncertain testimony that all of Island 98 never disappeared, to outweigh the positive statement of witnesses who knew that it all caved away? One of the witnesses lived on the Mississippi shore immediately across the chute from the Island and the other passed it six times per week.

Mr. Purnell who lived on the Mississippi bank opposite Island 98, from 1880 to 1897, and who had *been on it hundreds of times*, said it all washed away in the freshet of 1894 or 1895, and later said 1893, 1894 or 1895. R. 264-265-271.

Jas. V. DeLahunt, (R. 269-291) who was pilot and captain on the Mississippi River from 1879 or 1880 to 1908, passing the point in controversy six days in a week, and whose special business it was to watch all changes in the river, such as islands, sand bars, accretions and cavings, so as to enable him to run with safety,

said, when asked what became of this Island, "*It disappeared absolutely.*" When asked what became of the trees on the island, said: "They went to China, I reckon." R. 292.

He said, "It entirely disappeared—nothing left of it. He was running up and down there six times a week, (R. 294), and ran steamboats over the top of the place where it had been."

Second: *Lawrence Towns' Testimony.*

He was defendant's witness. He is colored. R. 224. Cannot read. R. 220. Said he went to the location in controversy in 1880. He knew where Island 98 was, "they called it Scruggs' Island, and there was another, we called "*Tom Hopkins Island.*" Scruggs' Island was in front of Chotard. R. 220.

Asked to state whether the island had been there ever since he had been there, R. 221.

Answered, "Yes sir: *a part of it.*" R. 222.

He was a roustabout on steamboats, running by the place in controversy, for ten years. R. 220.

When asked if the Newman place was called Willow Point, said, "Some called it Willow Point, and have got it here in my pocket." He then handed counsel a lease, from Messrs. R. F. Learned & Son, to the witness, of the property in controversy. (He leased it for six or eight years after 1912.) R. 224-225-227.

This property was called Newman's Towhead, in the lease. This property leased to Towns is the property in controversy. He had 800 or 900 hogs on the land he leased, known as Newman's Towhead. R. 227.

That he had his hogs on Hopkins Island. This shows, what he called Hopkins Island was the same property

that he leased from Mr. Learned, as Newman's Towhead, being the property in controversy. R. 232.

He said later that Hopkins Island was north, or up stream from Scruggs Island, just a little ahead of it. R. 232.

This makes his testimony very contradictory, and even if such arose from ignorance and stupidity, it is insufficient to contradict the positive clear cut testimony of Mr. Purnell and Captain DeLahunt, that all of Island 98, or Tullos Island disappeared.

He said that in low water you could walk all the way from the Louisiana shore to Newman's Towhead. R. 233.

While on page R. 234 he said he could not say.

Witness said he figured that the land *came back* from Scruggs' Island. R. 238.

Asked if he figured that it came back from Scruggs' Island, the island where he put his hogs, answered: "That is what I figured when I went over there to live." He was then asked if Scruggs' Island disappeared, and answered: "Not all of it. A portion of it did. *At low water there would be some there. At high water there would be none of it there, where I lived, and only some of Scruggs' Island left at low water.*" R. 238-239.

He said he did not know whether Scruggs' Island was the same he leased from Mr. Learned. R 239.

When he leased from Mr. Learned at Newman's Towhead, he thought it was just the same ground as Scruggs' Island. R. 239.

Now as none of what he called Scruggs' Island, according to his statement, was left except in low water, and as Newman's Towhead was as high, or higher, than

the mainland, this could not have been Scruggs' Island, which was gone, except at low water. R. 239.

Comment:

He no doubt knew Tullos Island, or Island 98, called Scruggs' Island, when he went to Chotard in 1880.

While he said a part of this island had been there ever since he went there, further on he said the island where he put his hogs, which is the land in controversy, is Scruggs' Island. Asked whether Scruggs' Island disappeared, said: "Not all. A portion did. At high water there would not be none of it there. There would not be no land where I lived."

If this is true, at least all of the top part caved away. If the top part disappeared, so that none could be seen, except in low water, all the trees, willows and cotton wood, necessarily disappeared.

Towns was a roustabout on boats in which Capt DeLahunt was captain and pilot.

His testimony with all of its contradictions and uncertainties, certainly cannot outweigh the positive, clear and amphatic testimony of Capt. DeLahunt, that it entirely disappeared, there not being a vestige of it left, and that he ran steamers over the place where it had been.

Capt. DeLahunt passed this island six times per week, and often when he ran by with a raft or barge on account of narrowness at that point, had to flank his steamboat. Furthermore, it was a part of his business to watch bars, islands, cavings and all changes in the river, to enable him to navigate it with safety.

This witness, Capt. DeLahunt, is intelligent, and is now in the employ of the United States Government, as

pilot and captain of a boat, in the Second District, running out of Memphis.

Neither could Towns' testimony outweigh the testimony of Mr. Purnell, who lived on the Purnell Plantation of his father, in Mississippi, immediately opposite Island 98, from 1880 to 1897, and knew that it entirely caved away, he saw it all cave away.

Third: *William Miller's Testimony.*

Miller, another colored roustabout, was defendant's witness, and was born in 1875, and lived on Eustacia Plantation, of Major Higgins, in front of Island 98, from the time he could first recollect. It had about 250 acres. R. 302-303.

He could first recollect along in 1882, 1883 and 1884. R. 307. He was on the Island in 1882. R. 308.

Island 98 did not entirely disappear. The lower end all washed up. The upper end did not wash off. *There were 75 or 80 acres that did not wash off.* R. 303.

He was on Island 98 in 1882 and walked across to it from the Mississippi shore. Old man Joseph Scruggs lived on it. He moved from Eustacia Plantation in 1886. R. 308.

When he left Major Higgins' place, he went to Mr. Hamp Davis' place, called Brunswick, which is about eight miles *below* Chotard. R. 309.

He lived at Brunswick for ten years, or until 1896, but went up to Major Higgins' place every week. R. 310.

Between 1882 and 1896, the island did not cave much. the biggest part of the caving was in 1897. R. 310.

(This does not tally with defendant's theory that the channel went east of the Island prior to 1894, as it would have then ceased to cave.)

It caved on the outside and at the lower end. It caved a right smart on the lower end and sometimes big trees would fall in the river as it caved. R. 310.

Witness at first stated that the channel changed from the Louisiana side to the Mississippi side for a while; R. 314; but clearly misunderstood the question, as on the same page he said the change he was talking about was in 1912 or 1911, when the river broke through and cut off and left a big lot of land; and further said that after 1886, the river between Island 98 and the Mississippi shore, *except during high water, was not navigable for boats. The channel never did go there. It never did get so during low water that you could not walk from the Mississippi shore to the island.* R. 314-315.

He further said that when he said the channel changed he referred to the cut off about 1911, and that was the only change that he knew about, and there was no other change, except that. R. 316.

Comment:

The testimony of this witness for defendant, if believed, absolutely destroys the contention of defendant that the river came around east of Island 98, and that the balance of the property in dispute was added thereto by accretion.

While we think this witness wanted to state the truth, he left there and went to Burnswick, eight miles below, in 1886, and would not naturally observe the island as closely as Capt. DeLahunt, who passed it six times a week, as pilot and captain; nor would he observe it as closely as Mr. Purnell who lived immediately opposite the island from 1880 to 1897, and knew that it all disappeared.

Complainant maintains that the testimony of the eye witness clearly shows that Island 98 entirely disappeared.

Defendant's witness Miller testified that all of the island caved away except 75 or 80 acres.

Suppose, for argument only, it did not all cave away, will Mississippi also claim the accretion that made out from Louisiana and extended across to the island? Is it not certain that this would be Louisiana territory even if the island did not all cave away? However, we do not think there is any reason for the court to pass on this question, as it has been shown as clearly as it is humanly possible to show any controverted fact, that the island all washed away and disappeared.

Did Witness Mistake the Island and Bar North and West of Island 98 for Hopkin's Island?

Capt Chas. H. West:

Chart "H" also "Exhibit BB" shows Hopkin's Island as it existed in 1870, according to the survey which sectionized it as a part of Louisiana. R. 139.

At this time in 1870, the main shore line opposite Hopkins' Island was about 3000 feet further inland (on Mississippi side) than it was at the time of the Commission's survey of 1882, and a channel of the Mississippi River passed between Hopkins' Island and the main shore (of Mississippi) as it existed in 1870, as shown by "Exhibit BB."

After 1870, the river in the bend north of Willow Point began to move southwesterly, and built out the Mississippi shore a distance of about 3000 feet, so that in 1882, the Mississippi shore line was along what had been the

eastern boundary of Hopkins' Island, and the channel at that date was over the position occupied by Hopkins' Island in 1870, having destroyed all of the Island except a very small part of the southwestern extremity. R. 140.

Whether it was all destroyed at a slightly previous, or a slightly later date (than 1882) there is no history. * * * Witness hardly thought that the southwestern extremity was destroyed, because the river from 1882 on up to 1913, was moving eastward. R. 145.

E. T. Purnell.

He went on the sand bar (in Louisiana) west from Hopkins' Island. He knew Hopkins' Island in 1878 or 1879. It was northwest of Island 98. It was a northerly direction from the towhead, or sand bar (in Louisiana.)

He did not know whether any of it remained. R. 275.

A greater portion of Hopkins' Island was on the west side of the main channel. It may have gotten over on the east side. The river changed in there. The current changed at one time. It is possible that it could have been one way or the other. When he first knew Hopkins' Island the river was *on the Mississippi* side of it, along the east side: along the Mississippi shore. R. 276.

A stream of water went through between Hopkins' Island and the Louisiana shore—it was a good width and deep. R. 276.

Asked if it was a steamboat channel, said, "yes."

Witness was then shown "Exhibit," and pointed out the part marked thereon as "High Bar," written on the lower left hand corner of it were the words "1882 Bar Line," and he said, "that is what I have always known as Hopkins' Island. R. 277.

The witness said he was not much on maps. R. 261.

Comment:

The defendant claims this witness mistook for Hopkins' Island, what they were pleased to call Upper Tullos Island. While the witness was evidently confused in trying to interpret the map, the evidence clearly shows this contention of defendant *is not justified*, as the witness said when he first knew Hopkins' Island, prior to 1880, the main channel was east on the side next to Mississippi, though there was also a channel for steamboats on the west side of the island.

The survey of 1882 shows that the channel and High Bar, the witness pointed out as Hopkins' Island, was against the Mississippi shore, while the testimony of Mr. Marshall shows that in 1890, the chute between this bar or island in Mississippi was possibly 1000 feet wide. R. 175.

The fact is he was not familiar with maps, and mistook this High Bar for what he had known as Hopkins' Island. Besides Hopkins' Island, at one time, was nearly in the same location as the High Bar just a little west of it. As the witness said when he first knew Hopkins' Island, the river was on the Mississippi side of it, he could not have mistaken the High Bar for Hopkins' Island.

Capt. Jos. F. DeLahunt:

In speaking ofIsland 98, said, "We had to flank that place because it was very narrow between Hopkins' Towhead and Island 98." R. 292.

The channel ran between Hopkins' Towhead and Is-

land 98. He said it ran West of Island 98, East of Hopkins' Island, or Towhead. R. 293.

There was no channel West of Hopkins' Island. R. 299.

It never ran there in his time. (1880 to 1897.)

Hopkins' Towhead was West of Island 98. R. 300.

Comment:

Captain DeLahunt did not run in there until 1880, and the probability is that Hopkins' Island had disappeared; but if it did not all disappear, that what little was left had attached to Willow Point sand bar, and that he called Willow Point sand bar and Towhead, Hopkins' Towhead. In any event, the Towhead to which he referred, was on the Louisiana side of the channel, and he could not have been speaking of the Island or High Bar, which in 1882 and in 1890 was only separated from the Mississippi bank by a chute, possible 1000 feet wide during high water and dry in low water.

Lawrence Towns:

Went to the locality in 1880. There was Scruggs' Island and another we called Tom Hopkins'. R. 220.

He leased Newman's Towhead from Mr. Learned for six or eight years. R. 224-225-227.

This is the property in controversy.

He had 800 or 900 head of hogs on the property leased known as Newman's Towhead. R. 227.

He also said he had his hogs on (what he called) Hopkins' Island. R. 232.

He leased this property from R. F. Learned & Son, as property in East Carroll Parish, La., R. 226.

It is therefore certain that he referred to Hopkins' Island and Newman's Towhead as the same property.

If, between the years 1890 and 1894, the main channel was between Willow Point Bar, or Towhead, and the Mississippi shore, with no island intervening on the west side of the channel, then the judgment must be for complainant.

The question determinative of the issue in this case is, where was the channel between 1890 and 1894, with reference to Willow Point, and any islands on the Mississippi side of the river?

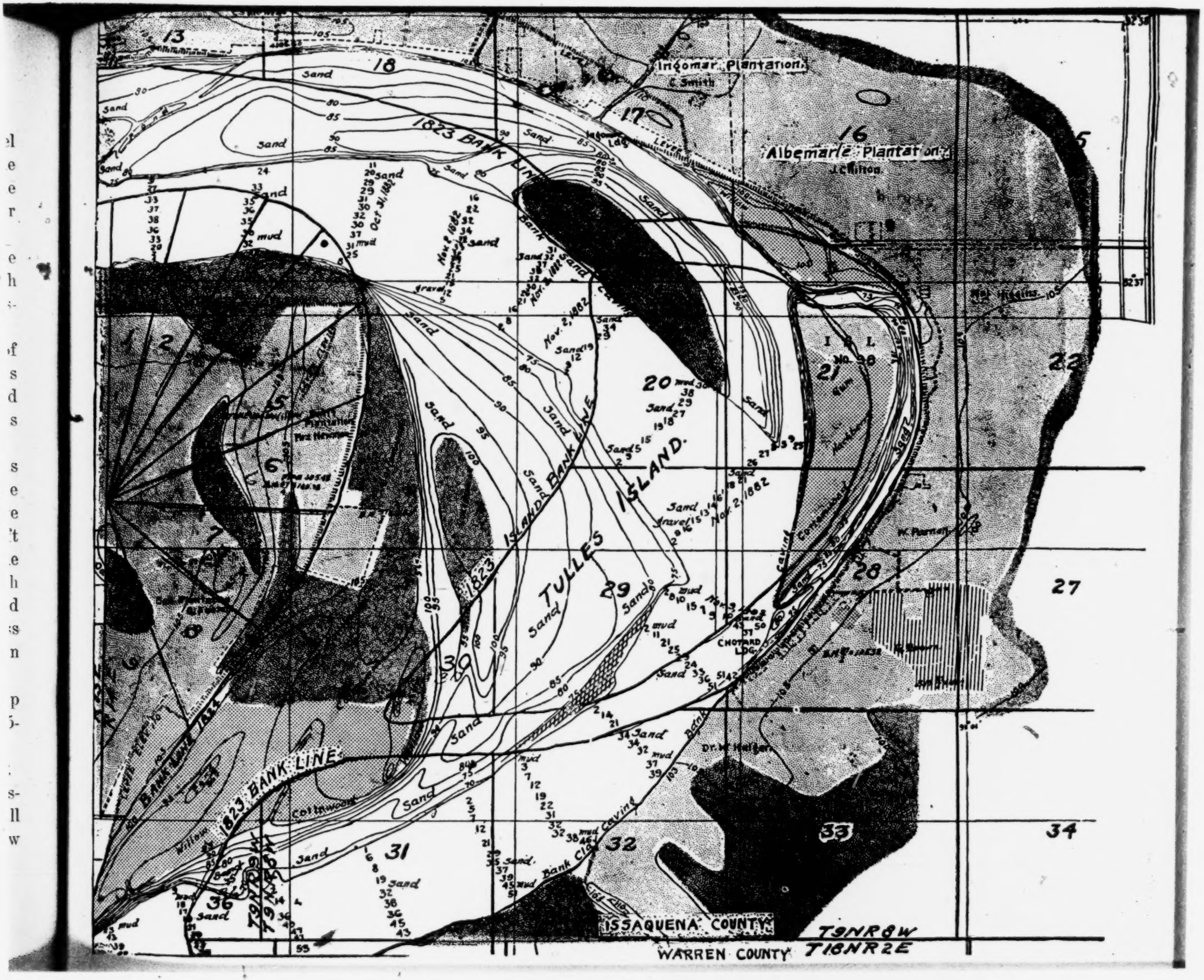
Mr. I. B. Beard (1876-1926) says: "It was East of Newman's Towhead on the Mississippi side. There was no island that he ever knew of between the towhead and the Mississippi shore." (Some of Tullos Island was there as late as 1890.) R. 89.

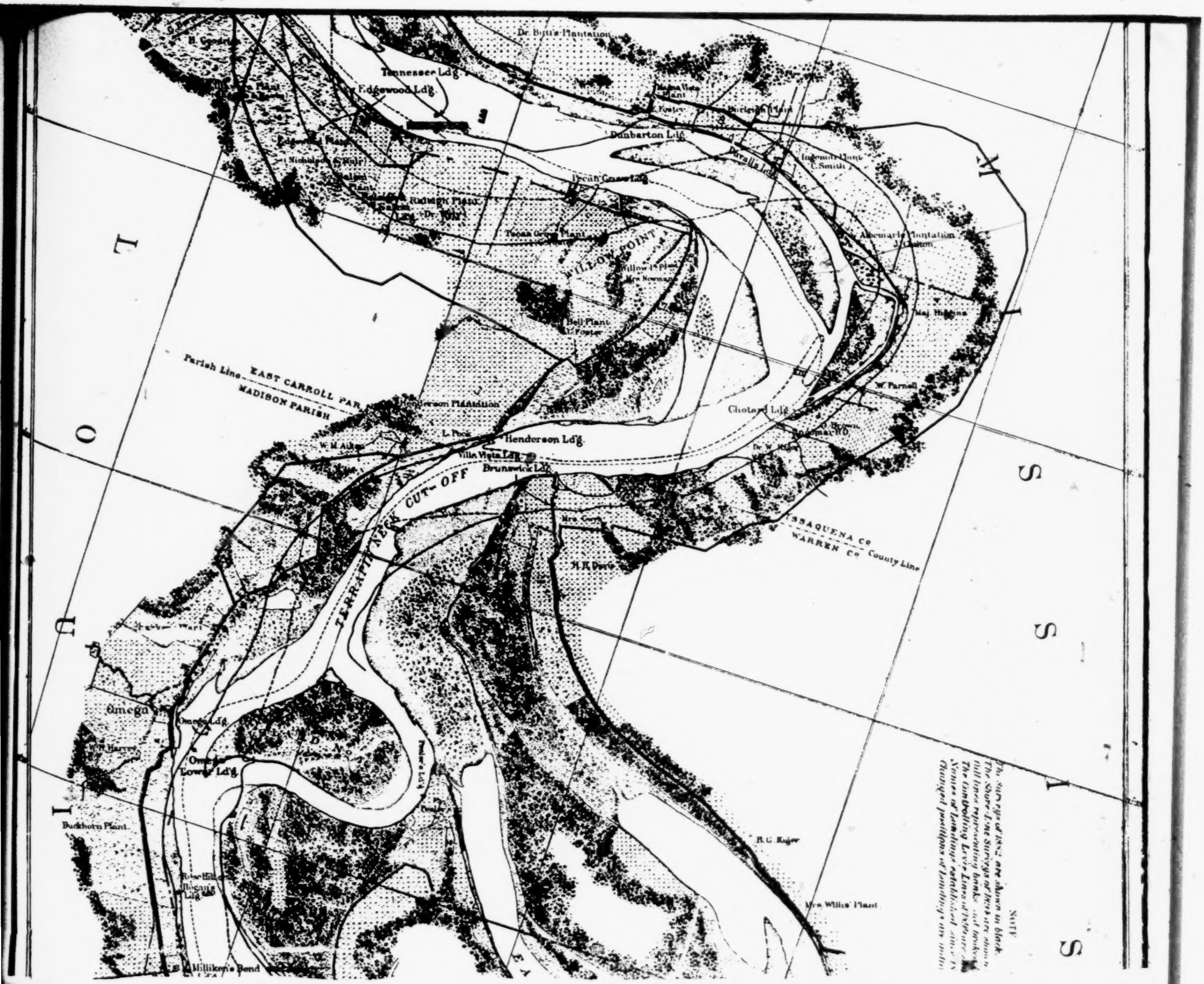
Comment: Some of Tullos Island remained as late as 1890, but this island did not jut out into the river; the river side of the island continued the bank line as above and below it, and the chute which made it an island left the river almost at right angles and returned the same way. Chart 1882) and was only 1000 feet wide in high water and dry in low water. Apparently Mr. Beard had not been across the river at that point; and from across the river there would be little appearance, if any, of an island.

E. T. Purnell, (1876 to 1897) says: "All the time up to 1897, the channel run East of the Towhead." R. 265-269.

And it was on the West side of the Island 98. R. 263.

Boats never did run between Island 98 and the Mississippi shore, except during high water, when small boats could run there. They could not do so in low water. R. 263.


Ingomar Plantation
C. Smith
Albemarle Plantation
J.C. Hilton
1823 BANK LINE
ISLAND
TULLES
Sand
mud
Gravel
Cotton Wood
Willow
Bank Clay
Levee
Canal
Dr. W. Hallam
CHOTARD LDG.
ISSAQUENA COUNTY
WARREN COUNTY
T9NR8W
T18NR2E



Map Mississippi River Commission of 1882, 1883. Showing Survey of 1894

Capt. Jos. V. DeLahunt (1880 to 1908), R. 289, said: "The channel was West of Island 98 and East of Hopkins' Towhead until Island 98 disappeared." R. 293.

Geo. R. Newman (1893 to 1897), said conditions at Willow Point first came to his attention in 1891. R. 81.

He was born on Willow Point—rode over the sand bar when a boy—pastured cattle on it. R. 66-81.

He never heard of Tullos Island. R. 73.

Asked if there were not three channels back in the nineties said, "No, there was not *but one channel* that he knew of." R. 75.

Witness further stated *there was no island there.* He knew positively there was no island there. The first island made there was the cut-off of 1912.

Defendant shows by its testimony that neither Tullos' Island, Island 98, or the Island above had entirely caved away in 1890. R. 173.

What Surveys and Maps Show

Complainant's "Exhibit M," being Chart 45 of the Mississippi River Commission, a small copy of which is attached to page 58 of defendant's brief and also inserted herein, showed that nearly all of Tullos' Island had caved away in 1882, the caving having been from the West side thereof, while "Exhibit C." which is a chart of the Mississippi Commission's survey of 1882, with the survey of the Mississippi River Commission of 1894, superimposed thereon in red lines, solid and broken, the solid representing the banks and the broken lines the edge of the bar next to the water, being Sheet 17 of the Mississippi River surveys, R. 138, shows that all of Island 98 and the bar, or island above had caved away

and was then in the channel, or covered by the bar and accretions from Louisiana, except a small part of the upper island, or bar, several miles northwest of Tullos Island, and this small piece which remained was adjacent to the Mississippi bank and not in controversy.

This argument is merely used to corroborate the positive testimony of the eye witnesses that all of Island 98, or Tullos Island, caved away and disappeared.

This fact is, therefore, established by both the eye witnesses and the surveys and plats.

Elevations Shown on Worksheets of Survey of 1894

Capt. Marshall testified to elevations shown on the worksheets of the survey of 1894. The highest point being 110, and various other elevations given. R. 172.

Attached to page 28 of defendant's brief is a map drawn by Capt. Marshall, marked Defendant's Exhibit 4 D, purporting to show said elevations. This map was not drawn by the engineers who made the survey of 1894, but is Capt. Marshall's deductions from the work sheets of the survey of 1894. The 110 elevation is shown on the southern section line of Section 17; other high points are in the NE 1-4 of Sec. 20, and NW 1-4 of Sec. 21, the western and southwestern part of Sec. 21, extending over into the SE 1-4 of Sec. 20. In the eastern part of Sec. 29, which is on the western side of the river channel of 1882, is shown an elevation of 100. Various elevations are shown in what he claims was the channel of 1882 in Sections 19, 20 and 29.

By reference to the survey of the Mississippi River Commission of 1894, shown on Sheet 17 of said surveys, being Complainant's Exhibit "C," R. 21-138-148-151,

and the testimony of Capt. West explaining same, it will be seen that the word, "accretions," marked thereon, covered parts of Sections 17 and 21, R. 155, these being two of the sections on which elevations are shown on Defendant's Exhibit 4-D.

These elevations could not have been on Tullos Island, as the evidence clearly showed Tullos Island entirely disappeared.

It will be noticed that in Sections 21 and 20 a good portion of what defendant claims as elevated land extended nearly one-third of the way across what Capt. Marshall claims in Exhibit 4-D was the river in 1882, and as the channel was on the Mississippi side of the river, this high ground noted by defendant was in the channel of the river, as it existed in 1882.

The evidence overwhelmingly shows that from 1882 to 1894, the Louisiana shore continued to extend east and northeast toward the island and above the island, and that the Mississippi shore receded substantially the same distance.

The testimony of defendant showed that in 1890, some of Island 98 and the island above it remained, and that the Mississippi River had not gone around east of Island 98, or the island above it, and the chute between said island was passibly 1000 feet wide. R. 173-175.

It is further the contention of defendant that at the time of the survey of 1894, the river had cut around behind these islands, and that the islands had made by accretions westwardly so as to connect with the Louisiana shore; and that the elevations shown were on the part of said islands that had never washed away.

It is impossible to maintain defendant's contention in

this regard. The elevation in the southeastern part of Section 20 extends into the channel of the river as it existed in 1882, and for defendant's contention to be correct, the river having gone around east of these islands, at some indefinite period between 1890 and 1894, it would be necessary in the intervening period, necessarily less than four years, for the old channel of 1882 to have not only filled up, but to have been raised to an elevation of over 100 feet, with willows and cottonwood growing on it. See Defendant's Exhibit 4-D, in the record, which is larger than the same exhibit in his brief.

It will be noticed that on defendant's Exhibit 4-D, attached to page 28 of its brief, in the eastern part of Sec. 29, and just west of the western section line of section 28, on the west side of what Mr. Marshall claims was the 1882 channel, an elevation of 100 is noted; this elevation is a little more than two miles from where said exhibit indicates that the channel of 1894 left the channel of 1882, on the north, being near the lower end of what defendant claims was the old bed of 1882, while at the upper end of this old channel the elevations noted are 86.6, 86.4, 86.6, 86.2, 86.9 and 90.6 feet, which is from 9.4 to 13.4 feet lower at the upper end of what is claimed to be the abandoned channel of 1882, than at the lower end.

It is a known fact, that the evidence shows same as well, that the Mississippi River is a silt bearing stream. The evidence shows that the abandoned channel, caused by the cut-off of 1912-1913, at the upper end thereof, had so filled by 1916, that boats could not pass through it even during high water, while the lower end of the abandoned channel for a considerable distance was still open

and water therein, at the time the testimony was taken in 1926, thirteen years after the cut off.

The reason, as is well known, is that when the current slackens, the silt deposits, and it naturally deposits first at the upper end of an abandoned channel, and as soon as the elevation is as high as the adjacent bank, the deposits are no greater there than anywhere else along the banks of the river.

These physical facts indicate that defendant is mistaken in saying that prior to 1894 the channel was abandoned, but they strongly support the testimony of complainant's eye witnesses that the channel was never abandoned until the cut-off in 1912-1913; and that the Louisiana 1882 bar line continued to extend in an easterly and northeasterly direction until the cut-off of 1912-1913, all of which is shown by the plat of survey of the Mississippi River Commission of 1894.

By referring again to defendant's Exhibit 4-D, shown at page 28 of defendant's brief, it will be seen that the Louisiana 1882 bar line need only have extended approximately three-fourths of a mile to have covered the location of the 110 elevation, and all other elevations, as shown on said exhibits, and as the time within which this could be done was from 1882 until a little before 1894, there was a period within which this could be accomplished, of from ten to twelve years.

The caving of the Mississippi shore had been *very rapid* from the time of the 1882 survey by the Commission, up to the time the *cut-off* was made. R. 141.

The river was narrow and deep, and maintained about the same width. R. 144-155-157.

Captain Marshall, the witness for defendant, who

made most of the maps, relied upon by defendant, says he adopted the same rule as Capt. West, "to allow the usual width of the river." R. 181.

It would follow that if the river approximately maintained its width, that the Louisiana bank advanced by accretions, correspondingly as the Mississippi shore receded by erosion.

Mr. Albritton testified that the largest timber would probably be in Lots 3 and 4 of Section 21. R. 250.

Now, while this might be so, it will be seen there were no surveys introduced in the record.

Mr. Albritton said one was made in September, 1924, by Wm. Hull, of Rolling Fork, Miss., whom he did not even know to be a licensed surveyor. R. 257.

Mr. Albritton, who is interested in this litigation, neither introduced the survey in evidence, nor did he call the surveyor as a witness, so that he could have been cross-examined.

Plaintiff believes this sort of testimony will not appeal to the court.

The Mississippi River Commission was created by Act of Congress of (June 28th, 1879, C. 43, Sec. 1, 21 Stat. 37. See Comp. Stat. 1918, Sec. 9993.)

The Commission made a very comprehensive and complete survey of this reach of the river in 1882, and has been actively engaged there ever since.

If between 1890 and 1894, the river had cut around east of Island 98, and the Island adjacent, so as to make two channels of the river at that place, there would be some history of it in the records of the Mississippi River Commission. Its surveys contradict such theory, and

clearly show that defendant's contention is incorrect. Especially is this shown by the survey of 1894.

If the channel had cut around east of said Mississippi Islands, between 1890 and 1894, some of the witnesses who lived on the banks of the river adjacent the point in controversy would have known about it, while there is not a witness who positively swears to such fact.

For the theory of defendant to be correct, the channel as it existed, *not in* 1882, but after 1890, at the time defendant claims it changed to the east of said Mississippi Islands, between 1890 and 1894, would necessarily have filled up and have had willows and cottonwood growing upon it, all within some indefinite period of time, but necessarily less than four years.

The fact is such is a mere theory of defendant, which is overwhelmingly contradicted by the eye witnesses, the government surveys and the physical facts.

Capt. Reed was familiar with the Willow Point place since 1894 and said, "between the towhead and the old timber line there was a depression of white sand, and I think in extremely high water very small boats could go through this depression. That it passed between what was known as Newman's Towhead and the mainland of Louisiana." R. 107.

The fact was also testified to by other witnesses.

Defendant claims this depression was in the location of the 1882 channel. Complainant does not know about this; but whether it is, or is not, cannot help defendant's theory, for this reason: defendant's testimony makes certain the fact that if the river went around east of Island 98 and the island adjacent, it necessarily did it between 1890 and 1894. All of the testimony in the re-

cord shows that from 1882 to 1912 the Louisiana shore was rapidly extending by accretion and the Mississippi shore rapidly receding by erosion, therefore if the river did go eastward around Island 98, and any other island, after 1890 and before 1894, the abandoned channel *could not possibly be in the same location as* the channel of 1882, as it had moved a great distance to the east during the years from 1882 to said indefinite time between 1890 and 1894, when defendant claims it went around east of Island 98. The channel of the river at the time it went east of the island, if it did so, must have been more than a mile east of where it was in 1882.

It is certain that the depression between Newman's Towhead and the Louisiana shore, is not and could not be the filled up abandoned bed of the river as the bed existed at the time defendant claims the channel passed around east of Island 98, and adjacent bar, or island, for the reason shown that such abandoned channel, if there ever was such, would necessarily be at least a mile east of the location of the channel of 1882.

All the testimony shows that immediately east of the depression between Newman's Towhead and the Louisiana shore was Newman's Towhead, which was practically as high as the main land, with cottonwood and willow upon it.

This high ground would necessarily be in the location, or a part of the location where the abandoned channel was, as claimed by defendant, at the date of the abandonment in the indefinite period, between 1890 and 1894, and this is impossible, as the channel could not have filled and had *trees* on it within such short time.

The very fact that defendant cannot fix any date when

such abandonment occurred, that no one positively so swears, that many swear such did not occur, that no river chart shows such, that no civil engineer knew of such, and that the Mississippi River Commission had no such knowledge, is strongly persuasive that such never occurred.

Defendant has based its defense upon theories, which when tested by facts are shown to be without foundation, and not such as a court could base a judgment upon. Besides, if defendant sets up an avulsion, should it not prove such special defense.

Physical Facts

It is shown that the territory involved is in the Delta, or alluvial sections of Louisiana and Mississippi, and the evidence showed that the main banks, when the current was against them, washed away by erosion with great rapidity, whole plantations caving into the river, in a very short time.

Any islands formed in the river, or added to, or built larger by silt from the river, would likewise disappear with great rapidity when the channel and current was thrown against them.

The channel was thrown against Island 98, or Tullos Island, sometimes called Scruggs' Island, and also the Island or High Sand Bar adjacent to Island 98, and extending northward, with all of its force, and they would disappear just as fast as the main bank.

Originally, most of the channel was against the lower and western part of Island 98, but as the caving took place northwest of Willow Point, the channel struck Island 98 higher and higher and as it then went on up

against any islands, or bars above it, would it not wash all out of its way, leaving no islands at all at the point in controversy.

It will be shown by "Exhibit BB," showing Hopkins' Island, that no Island or High Sand Bar is shown adjacent and above Island 98.

It is also shown by the testimony of Capt. West, that after 1870 the river above Willow Point began to move in a southwesterly direction, until it cut into Louisiana shore about 3000 feet, and that the Mississippi shore built out about 3000 feet. R. 140.

This is doubtless the period when the High Bar north of Island 98 built up, as this bar is shown to have been there in 1882.

After 1882, the river moved eastward until 1913. R. 145.

When the river again swung east, at this point, this High Sand Bar, or Island above and adjacent to Island 98, would naturally be swept away.

In addition to the above arguments, complainant now calls attention to some statements in defendant's original brief:

On page 12 thereof, defendant said that from 1823-1824, the time of the original survey, to the survey of 1882, shown in Chart 45 of the Mississippi River Commission, no survey was made. (This is error—it is shown there was a survey in 1866 and 1870.)

The witness, Capt. C. H. West, superimposed on said Chart 45, the surveys of 1823 and 1824. (This is shown on Complainant's "Exhibit M," attached to page 12 of defendant's brief.)

Defendant said that this shows that from the dividing

line of Secs. 4 and 5, little or no change occurred, (that is between 1823 and 1882) but that the river had changed to the eastward, in front of Section 7, approximately one and a half miles.

It will be noted that defendant has attached this exhibit to his brief to sustain his argument, and therefore relied upon it as evidence for that purpose.

An examination of this Chart will show that from 1823 to 1882, there was no change at all in the boundary in front of the center of Section 4, which is a part of the Willow Point property.

This destroys the contention, or suggestion that there might have been an avulsion at such time between 1823 and 1882, which left a part of Mississippi territory on the Louisiana side.

As there was no change in the boundary at this point, it would have been impossible for Mississippi territory to have come over to the Louisiana side, and then for an avulsion to have occurred through Mississippi territory, as set out in the first contention of defendant, and this fact renders that contention of defendant a physical impossibility. This amounts to an admission of defendant that its first defense must fail.

Defendant admitted on page 46 of its brief that the boundary line of 1882 between Mississippi and Louisiana was marked on Charts 45 and 36 of the Mississippi River Commission, the same being the middle of the river between Willow Point and Tullos Island, (as it then existed.)

Comment:

If this is true, it should settle the question that all

land on the West side of the channel, as it existed in 1882, was Louisiana territory.

We now call the Court's attention to some additional facts bearing on the second contention of defendant that the Mississippi River cut around North and East of Tullos Island, and that the territory in question is accretions to Tullos Island.

Defendant complains on page 47 of its original brief, that "Exhibit I," made from Sheet 17 of the Mississippi River Commission Plats, showing the survey of 1894, is not correct.

We presume, however, that defendant will not say that the plat itself, of said survey of 1894, superimposed by the Mississippi River Commission, on the Chart of 1882 is not correct; and the superimposed plat of this survey of 1894, made by the Commission is what Complainant relies upon, and that shows that Tullos Island, and any other island in the vicinity, had entirely disappeared at the time of said survey for 1894. The Louisiana bar line is shown on this Chart in broken red lines. This plat is the contsruction of the Mississippi River Commission as to what its own survey of 1894 showed. The Commission which made the survey, ought to know better what its survey showed, than the theory of Capt. Marshall devolved thirty-two years later.

Defendant, in its original brief on page 68, says that the testimony is undisputed that in 1893 both islands were in existence, with trees growing on them.

Comment:

Complainant thinks this is true as to the early part of 1893, but believes both islands caved away either during

the high water in the spring of 1893 or 1894, as they were gone entirely at the time of the survey in 1894.

The above contention of defendant, however, amounts to a confession on the part of defendant that its second contention that the river had cut around North and East of Tullos Island cannot be maintained, for the following reasons:

In 1894, it is certain there was only one channel and no island between Willow Point and the Mississippi shore. See testimony of Captain Reed, R. 110, Geo. R. Newman, R. 74 and I. B. Beard, R. 95.

If defendant's contention was correct, the river would necessarily have abandoned its old channel between 1893 and 1894, and there would necessarily have been two channels in 1894, and the evidence shows that such did not exist.

Again, the abandoned channel must have filled up and had trees growing upon it within the period of a year.

Again, it is comparatively a recent date since 1894, and had such facts as defendant claims taken place, it could have produced plenty of witnesses to show same.

When a litigant can get evidence to show a fact, if it existed, and he does not produce such evidence, the presumption is such evidence does not exist.

The river was navigated at this time by numerous steamboats, and had two channels existed all of the captains and steamboat pilots would have known thereof.

Again, the Mississippi River Commission was created in 1879, and was actively engaged in surveys in this stretch of the river, and had two channels existed at this point, they would have known something about it, their

records would have shown same and such fact could easily have been established.

The fact that no steamboat captain, or pilot, nor the Mississippi River Commission knew of the existence of such fact, and that their records, or charts do not show same, shows that such fact did not exist.

The only witnesses who knew of this territory, as far back as 1894, introduced by defendant, were one white man and two negroes. The white man was Mr. R. E. Foster; and while complainant thinks he wished to tell the truth as far as he knew it, he knew very little about Tullos Island in recent years, which complainant has already shown in its briefs, by specific reference to his testimony, which will not here be repeated, except that he finally admitted that Tullos Island he was talking about, was exactly West from his place and across the river from it, and that he knew the island was there by seeing the trees upon it, and finally admitted that the trees he saw may have been on the Louisiana bank.

The negroes defendant introduced, were Towns and Miller, and complainant refers the Court to Towns' testimony as shown in the record, and thinks it can say without any fear of contradiction, that no court will attach any importance to his testimony.

Complainant calls the attention of the court to the fact, however, that while Towns' testimony was that all of Island 98 did not disappear, that he could not see any of it except in low water, and if that is true, at least all of the surface and timber on said island disappeared.

The other witness that defendant introduced to show that all of Island 98 did not disappear, was William Miller, and while he testified that seventy-five or eighty

acres of the island remaided, he said the channel never did run between the island and the Mississippi shore, and this testimony of their own witnesses, destroys the contention of defendant.

Captain Marshall had not been at this point since 1890 and could not testify from personal knowledge about it, and his testimony was mere theories, principally based on the work sheets of the surveys of 1894.

Such uncertain and unsatisfactory testimony as defendant has introduced to show its two contentions, cannot outweigh the positive testimony of complainant's eye witnesses that Island 98 entirely disappeared, and that there never was but one channel at this place, and that no island existed after 1894, at the point in controversy between Willow Point and the main Mississippi shore, at Albemarle Bend; nor can it contradict the positive showing from the plat of survey of 1894, made by the Mississippi River Commission; nor can it contradict the physical fact that the river would not sweep East by these alluvial islands, without washing them away.

Twenty Reasons Why Judgment Should Be For Complainant

Complainant gives the following as some of the reasons established by a preponderance of the evidence, why judgment should be rendered in its favor:

1st, It is shown that the accretions to the Louisiana shore, at the point involved, were continuous from the time of the survey by the United States Government in 1824 to the date of the avulsion in 1912-1913.

2nd. That during the same period the Mississippi shore receded correspondingly by erosion.

3rd. That after the boundary line between complainant and defendant had thus moved in an easterly direction, some five miles, an avulsion occurred in 1912-1913, through the Louisiana accretion, thus leaving Louisiana territory a part of the territory in question, on the eastern side of the river.

4th. That there never was any avulsion, other than the one of 1912-1913.

5th. That the banks of the river on both sides, as well as islands, were alluvion and when the current was directed against same, cut away very rapidly.

6th. That Tullos Island, or Island 98, entirely disappeared.

7th. That the channel at all times was west of Island 98 until it disappeared entirely, and was on the Mississippi side of the river at this point.

8th. That the timber on Island 98 was timber that grows on older soil, such as gum, hackberry, and cottonwood, one tree being 7 or 8 feet through.

9th. That the timber on Newman's Towhead, *being the property in dispute*, was principally cottonwood and willow, being such growth as appears on newly made soil in the Mississippi River.

10th. That the timber on the original land at Willow Point included sycamore, gum, elm and pecan, which usually grows on older soil, and being the same character of timber as was on Island 98.

11th. That Willow Point and Newman's Sand Bar, on which the Towhead later formed, existed at the same time as Tullos Island, and that they were on opposite sides of the river and could not be the same property as contended by defendant.

12th. That only one channel existed at the point in controversy prior to the 1912-1913 cut-off.

13th. The river at this point was about two-thirds, or three-fourths of a mile wide. It was wide and deep, and *maintained* about its same width, and as the Mississippi shore receded, the Louisiana shore necessarily extended, for the river to maintain its same width.

14th. That between 1882 and 1894, until Tullos Island entirely disappeared, the channel was always west of said island, with the current against the west side thereof, which was caving and could not be added to by accretions.

15th. That the channel until the cut-off in 1912-1913, was always east of Willow Point Bar, between that and the Mississippi shore, with no island of Mississippi, west of channel, intervening.

16th. That at the point in controversy, Louisiana is on the convex side and Mississippi on the concave side. The channel and the caving is always on the concave side, and the accretions are made to the convex side.

17th. That the Mississippi River Commission considered the land in dispute to be Newman's Tow-

head and not Tullos Island, or Island 98, or any other island in Mississippi, and therefore marked on Chart 47, being a survey of 1913-1915, made after the cut-off of 1912-1913, the words, "Newman's T. H." On the map of this Chart, made by defendant's witness, Capt. Marshall, in defendant's brief, page 16, appears in writing the words, "Tullos Island." These words are not on Chart 47 of the Mississippi River Commission, but have been placed on defendant's map by some one with pen and ink apparently; also referring to what purports to be a copy of work sheet of the survey of 1894, where appears the word, "Willows" on the original, indicating small growth. Capt. Marshall has, on his purported copy, changed the word to "timber."

18th. That Walter R. Newman owned Willow Point Plantation. The Bar attached was called Newman's, as it belonged to the owner of Willow Point Plantation, and the Towhead formed thereon was also called Newman's Towhead for the same reason. This shows that the people, the river men, as well as the Mississippi River Commission, considered the property in question to be Newman's Towhead.

19th. Had defendant's contention been correct, there would have been two channels at the point in controversy, in 1894, but the Chart of the Mississippi River Commission of 1894, superimposed on the Chart of 1882, shows only one channel, and where the second one must have been for defendant's

contention to be correct, shows the bar from the Louisiana shore, extending entirely out to the only channel that existed.

20th, That Mississippi has never exercised sovereignty and jurisdiction over the property in dispute, but Louisiana had actual possession.

Complainant asks for judgment in its favor as prayed for.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

NUMBER [redacted] ORIGINAL 86

IN EQUITY

THE STATE OF LOUISIANA,

Complainant,

Versus

THE STATE OF MISSISSIPPI,

Defendant.

BRIEF FOR THE STATE OF MISSISSIPPI DEFENDANT

RUSH H. KNOX,
Attorney General of Mississippi,
PAT HENRY,
RUFUS CREEKMORE,
ELMER C. SHARP,
HIRAM H. CREEKMORE,
Solicitors for the State of Mississippi.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1928

NUMBER 9, ORIGINAL

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THE STATE OF LOUISIANA,
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Versus

THE STATE OF MISSISSIPPI,
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BRIEF FOR THE STATE OF MISSISSIPPI, DEFENDANT

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Defendant.

BRIEF FOR THE STATE OF MISSISSIPPI, DEFENDANT

SYLLABUS

BURDEN OF PROOF

1. The same rules of law are applicable in boundary disputes between states as between individuals.

Rhode Island vs. Massachusetts, 12 Peters, 734, 9 Law Ed., 1233.

2. The fact that the boundary between the states is found in running water, does not vary this rule; the same rules of law with reference to erosion, accretion and avulsion as applied to suits between private individuals being recognized in boundary suits between states.

City of New Orleans vs. United States, 10 Peters 662, 9 L. Ed., 573.
Nebraska vs. Iowa, 143 U. S. 593, 36 L. Ed., 186,;
Missouri vs. Nebraska, 196 U. S. 23, 49 L. Ed., 372;
Arkansas vs. Tennessee, 246 U. S. 158, 62 L. Ed., 638.

3. There is a presumption in favor of the permanency of boundary lines once established.

Tennessee vs. Muncie Pulp Company, 119 Tenn. 47, 104 S. W., 437;
Simpson vs. Martin, 174 Ark. 956, 298 S. W., 861.

4. A party asserting material changes in the course of a boundary river such as affects the boundary line, has the burden of proving such changes.

Oklahoma vs. Texas, 260 U. S. 606, 67 L. Ed., 428;
Simpson vs. Martin, 174 Ark. 956, 298 S. W., 861;
Baumhart vs. McClure, 21 Ohio, Appellate, 491, 153 N. E., 211.

5. Before riparian rights can attach to land, the land itself must be contiguous to the water, actual contact therewith being necessary.

Farnham on Water and Water Rights, Vol. 1, p. 304;
Kinney on Irrigation and Water Rights, Vol. 1., pp. 760 and 761;
Saulet vs. Shepherd, 4 Wallace 502, 18 L. ed., 446;
Posey vs. James, 75 Tenn. (7 Lea), 98;
Fulton vs Frandoley, 63 Tex., 330;
Nugent vs. Mallory, 145 Ky., 824, 141 S. W., 850;
Wilson vs. Watson, 144 Ky., 352, 138 S. W., 283;
Ann. Cas., 1913-A, 774.

6. The party claiming land as accretion therefore, has the burden of proving (a) that such lands were actually formed by accretion, (b) that they attached to lands belonging to him and contiguous to the water.

Green vs. Witten, 200 Ky. 725, 255 S. W., 519;
Tillotson vs. Fulp, 172 N. C., 499, 90 S. E., 500;
Mann vs. Archbell, 186 N. C., 72, 118 S. E., 911;
Ball vs. McDuffy (Tex. Civ. App. May, 1919). 212 S. W., 844;

Producers Oil Company vs State (Tex. Civ. App., May, 1919), 213 S. W., 349;
Land vs. Dunn (Tex. Civ. App. Nov., 1920), 226 S. W., 801;
Lennox vs. Isbell (Tex. Civ. App., Dec., 1922), 245 S. W., 728;
Petty vs. Oil Company (Tex. Civ. App., Oct., 1923), 254 S. W., 565.

THE BOUNDARY LINE

7. The middle of the main channel of navigation is the boundary line between two states when such boundary is found in navigable waters.

Minnesota vs. Wisconsin, 252 U. S., 273, 64 L. Ed., 558;
Iowa vs. Illinois, 147 U. S., 1., 37 L. Ed., 57;
Arkansas vs. Tennessee, 246 U. S. 158, 62 L. Ed., 638.

8. Where a navigable river is the boundary line between states and the channel of navigation is changed by the gradual processes known as erosion and accretion, the boundary follows the varying course of the stream; but where such channel is changed violently and suddenly by the process known as avulsion, then the resulting change in the channel does not change the boundary.

Nebraska vs. Iowa, 143 U. S. 539, 36 L. Ed., 186;
Missouri vs. Nebraska, 196 U. S. 23, 49 L. Ed., 372;
Arkansas vs. Tennessee, 246 U. S. 158, 62 L. Ed., 638;
Oklahoma vs. Texas, 260 U. S. 606, 67 L. Ed., 428;

9. Where in a boundary river, the channel of navigation changes from one side of an island to the other, such change in the channel is treated as an avulsion and the boundary line between the states is not affected thereby.

Missouri vs. Kentucky, 11 Wallace, 395, 20 L. Ed., 116;
Indiana vs. Kentucky, 136 U. S. 1, 34 L. Ed., 329.

10. Nor, in such case does the fact that the old channel of navigation becomes dry land and filled up so as to connect the island to the opposite shore, vary the rule in this

regard; the boundary line being fixed as it was prior to such avulsion or change in the channel of the river.

Indiana vs. Kentucky, 136 U. S. 1, 34 L. Ed., 638.

11. The filling up of the old channel of a river in such a case is to be treated as an ultimate effect of the avulsion and not as an accretion.

Arkansas vs. Tennessee, 246 U. S. 158, 62 L. Ed., 638.

WEIGHT OF THE EVIDENCE

12. Long acquiescence in the location of a particular boundary and the exercise of dominion and sovereignty over the territory within it is conclusive as between the states.

Rhode Island vs. Massachusetts, 4 Howard 591, 11 L. Ed., 1116;

Missouri vs. Kentucky, 11 Wallace, 395, 20 L. Ed., 1116;

Indiana vs. Kentucky, 136 U. S. 479, 34 L. Ed. 329, 10 Sup. Ct. Rep., 1051;

Virginia vs. Tennessee, 148 U. S. 503, 37 L. Ed. 537, 13. Sup. Ct. Rep., 728;

Maryland vs. West Virginia, 217 U. S. 1, 54 L. Ed., 645;

Arkansas vs. Tennessee, 246 U. S. 158, 62 L. Ed., 638;
Michigan vs. Wisconsin, 270 U. S. 295, 70 L. Ed., 595;
Oklahoma vs. Texas, 260 U. S. 606, 67 L. Ed., 428;
Oklahoma vs. Texas, 272 U. S. 19, 71 L. Ed., 145;
Franzeni vs. Layland, 120 Wis. 72, 97 N. W., 499.

13. If the exercise of such acts of dominion and sovereignty over the territory in question by one state and acquiescence therein by the other be not sufficient to conclusively determine their rights with reference to it, these facts should nevertheless be given great weight in determining the merits of the controversy.

Indiana vs. Kentucky, 136 U. S. 479, 34 L. Ed., 329;
Louisiana vs. Mississippi, 202 U. S., 1. 50 L. Ed., 914;
Franzeni vs. Layland, 120 Wis. 72, 97 N. W., 499.

STATEMENT OF THE CASE

This is a suit in equity filed by the State of Louisiana to establish a portion of the true boundary line between it and the State of Mississippi. After answer filed by the defendant and on motion of the complainant, a commissioner was appointed by this court for the purpose of taking testimony and proof relative to the merits of the controversy. The case now comes before the court on the record and the transcript of the evidence taken before the commissioner.

STATEMENT OF FACTS

That portion of the boundary line between the states of Louisiana and Mississippi, here in dispute and the true location of which is to be determined, is in the vicinity of the territory known as Albermarle Bend of the Mississippi River, and between Issaquena County, Mississippi and East Carroll Parish, Louisiana. The territory in dispute was originally surveyed as a part of Mississippi and is described as a part of Sections 9, 10, 15, 16 and 17, all of Sections 20 and 21 and a part of Sections 22, 28, 29 and 30, all in T. 9 N. R. 8 W. Choctaw district as shown by the United States Governmental Survey of 1823. When this survey was made fractional Section 20, lots 2, 3, 4, and 5 of Sections 21; lots 3 and 4 of Section 28, all of Section 29 and fractional Section 30 composed what was known as Tullos Island, later as Island Number 98.

The remainder of the territory in dispute then lay to the East and North of Tullos Island on the Mississippi mainland, it being separated from the island by a chute running between it and the shore of the mainland.

The Louisiana shore line was surveyed in 1824. This survey shows Willow Point Plantation in Louisiana comprising fractional Sections 1 to 9, T. 19 N. R. 14 E numbered clock-wise in fan shape with the river flowing slightly south of east until it reaches Willow Point, from whence it sharply turns in a southwesterly direction.

...rict North of Red River State of Louisiana

Table of Contents

No	Area	No	Area	No	Area	No	Area
1	171 37	8	168 31	31	158 13		
2	178 60	17	160 09	32	156 98		
3	177 60	18	157 86	33	162 60		
4	170 25	19	182 66	34	161 40		
5	175 50	20	173 15	35	165 00		
6	174 72	21	159 13	36	166 42		
7	173 60	22	171 27	37	161 85		
8	167 03	23	175 40	38	164 03		
9	166 87	24	168 61	39	160 65		
10	156 60	25	165 20	40	168 42		
11	167 32	26	151 88	41	166 75		
12	162 45	27	145 13	42	164 75		
13	170 19	28	163 85	43	160 75		
14	159 51	29	16[illegible] 00	44	[illegible]		
15	174 04	30	159 85				6265 93

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No	Area
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4	15[illegible]
5	15[illegible]
6	15[illegible]
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8	14[illegible]
9	18[illegible]

Surveyed January [illegible] Ward [illegible]
by Ephraim [illegible]
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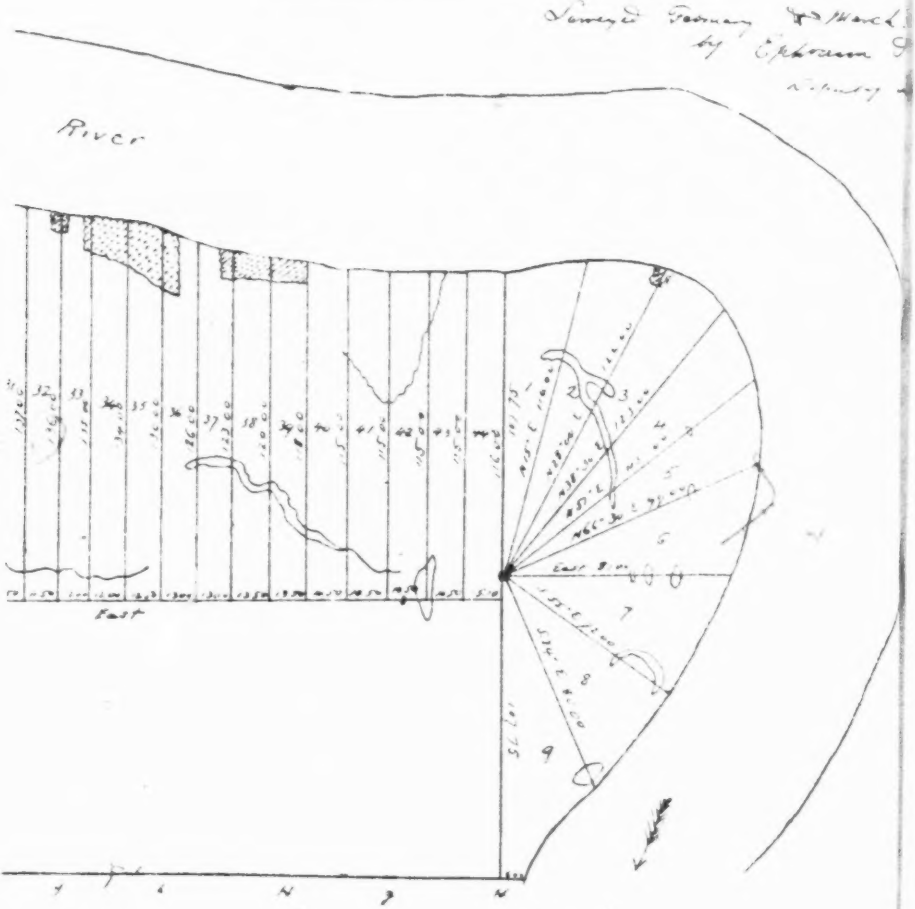
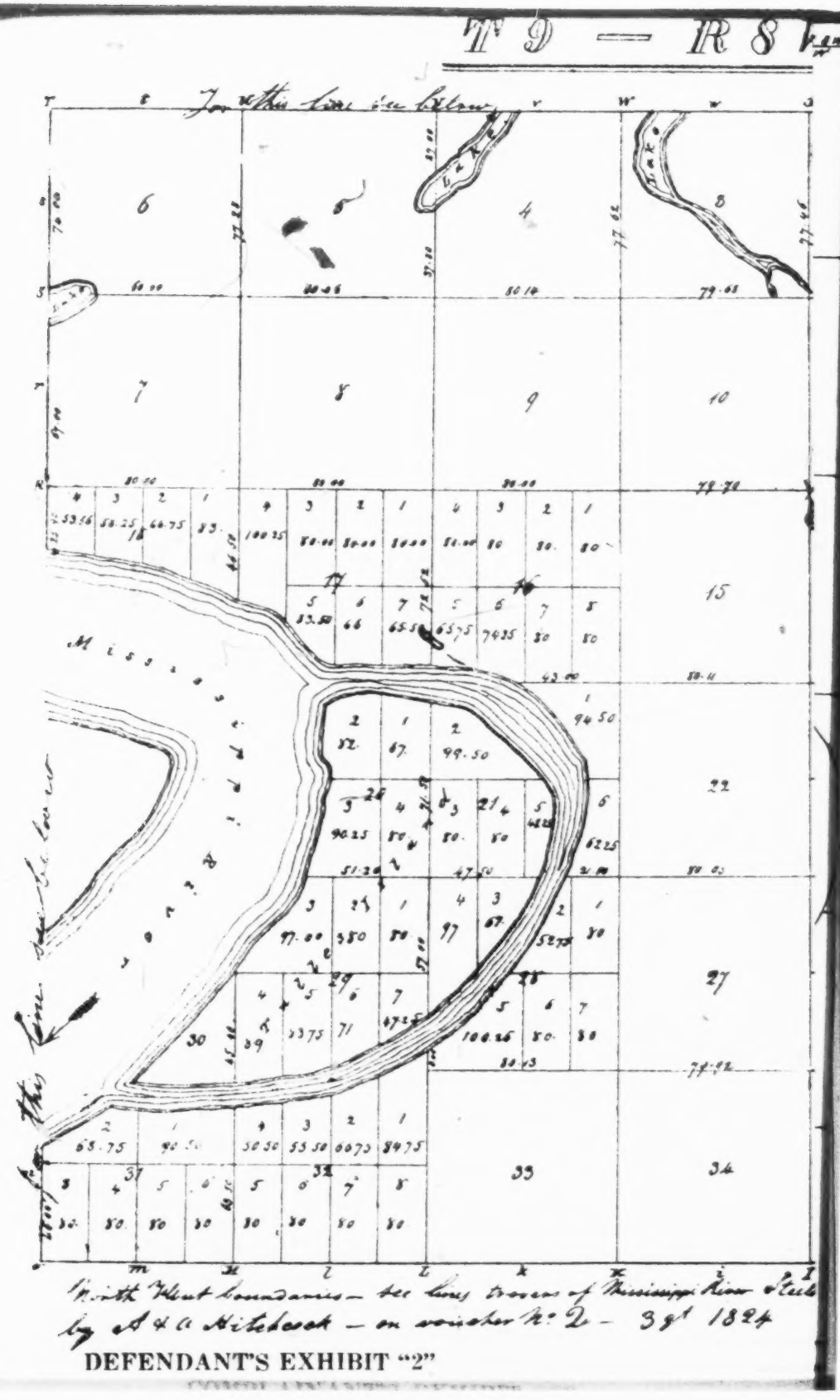


[illegible] Davis
Surveyor of Public Lands

COMPLAINANTS EXHIBIT "A"



With West boundaries — See Survey of Mississippi River Trib by A & A Mitchell — on number No. 2 — 3d 1824

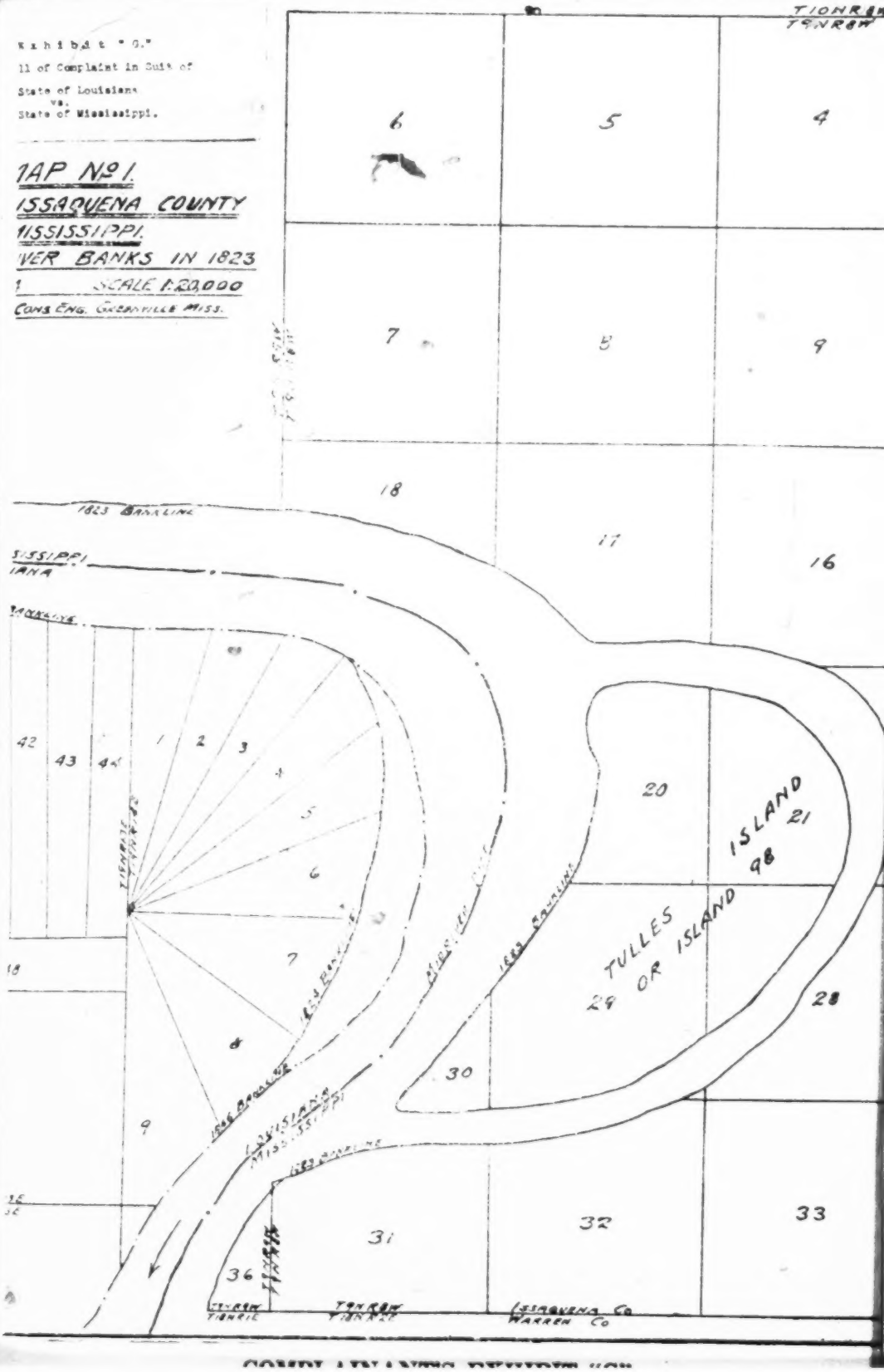
DEFENDANT'S EXHIBIT "2"

Exhibit "O"
11 of Complaint in Suit of
State of Louisiana
vs.
State of Mississippi.

MAP No. 1
ISSAQUENA COUNTY
MISSISSIPPI.
OVER BANKS IN 1823

1 SCALE 1:20,000

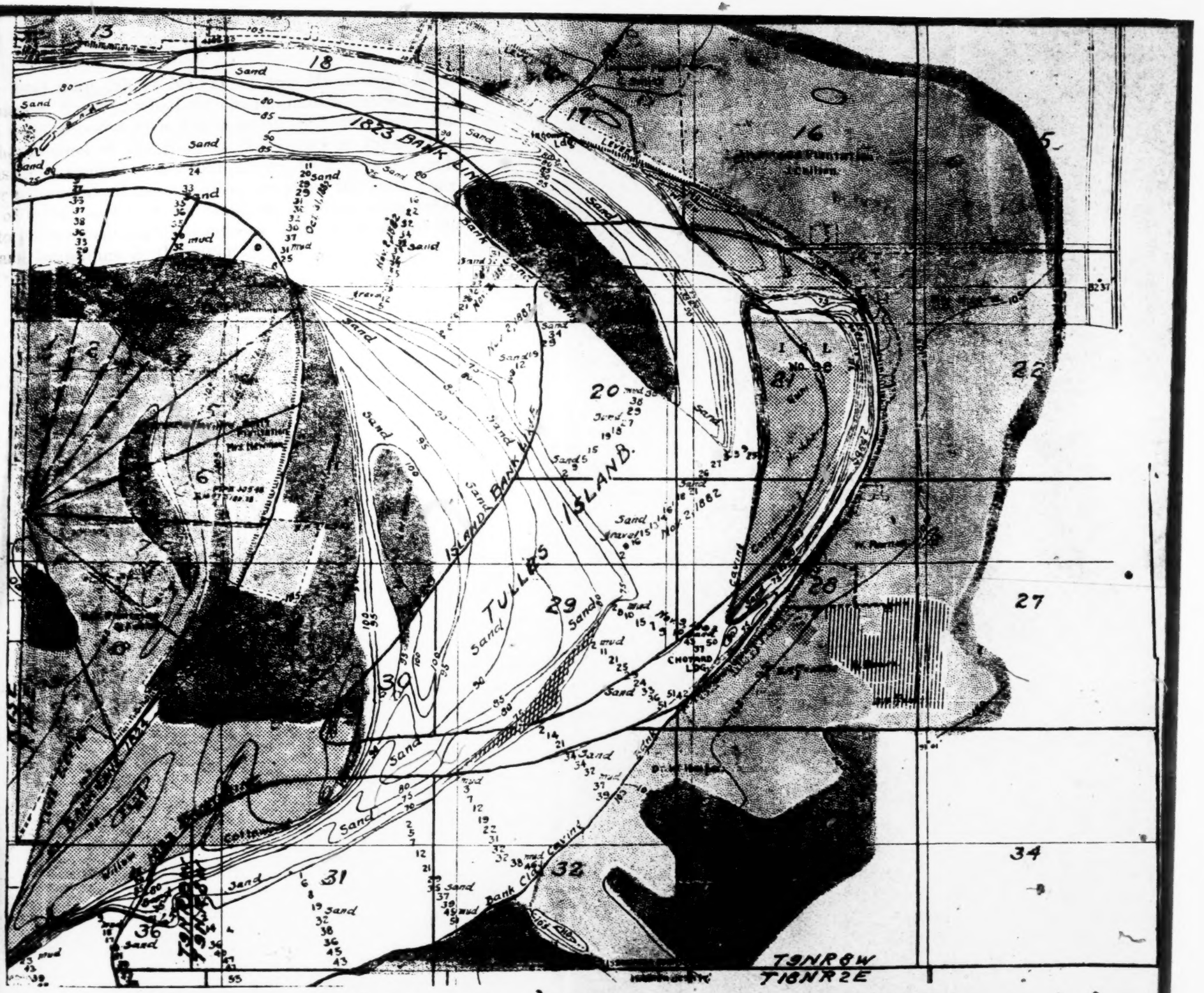
CONS ENG. GREENVILLE MISS.



The Mississippi 1823 and the Louisiana 1824 governmental surveys have been correlated by the complainant's witness, C. H. West, as is shown by the blue print exhibit "G" to his testimony.

After the 1823 and 1824 governmental surveys were made no survey of the reach of the river in question showing both banks was made until 1882, at which time Mississippi River Commission Chart No. 45 was made under the direction of the Mississippi River Commission. This chart is drawn on a scale 1:20000 and is for technical use. It shows all the details of the survey; not only the shore lines of the river and general features of the land such as levees, landings, cultivated and timbered lands but also government sights, the contours and elevations of the land and the soundings in the river. On this chart, the complainant's witness, C. H. West, has superimposed the 1823 and 1824 governmental surveys.

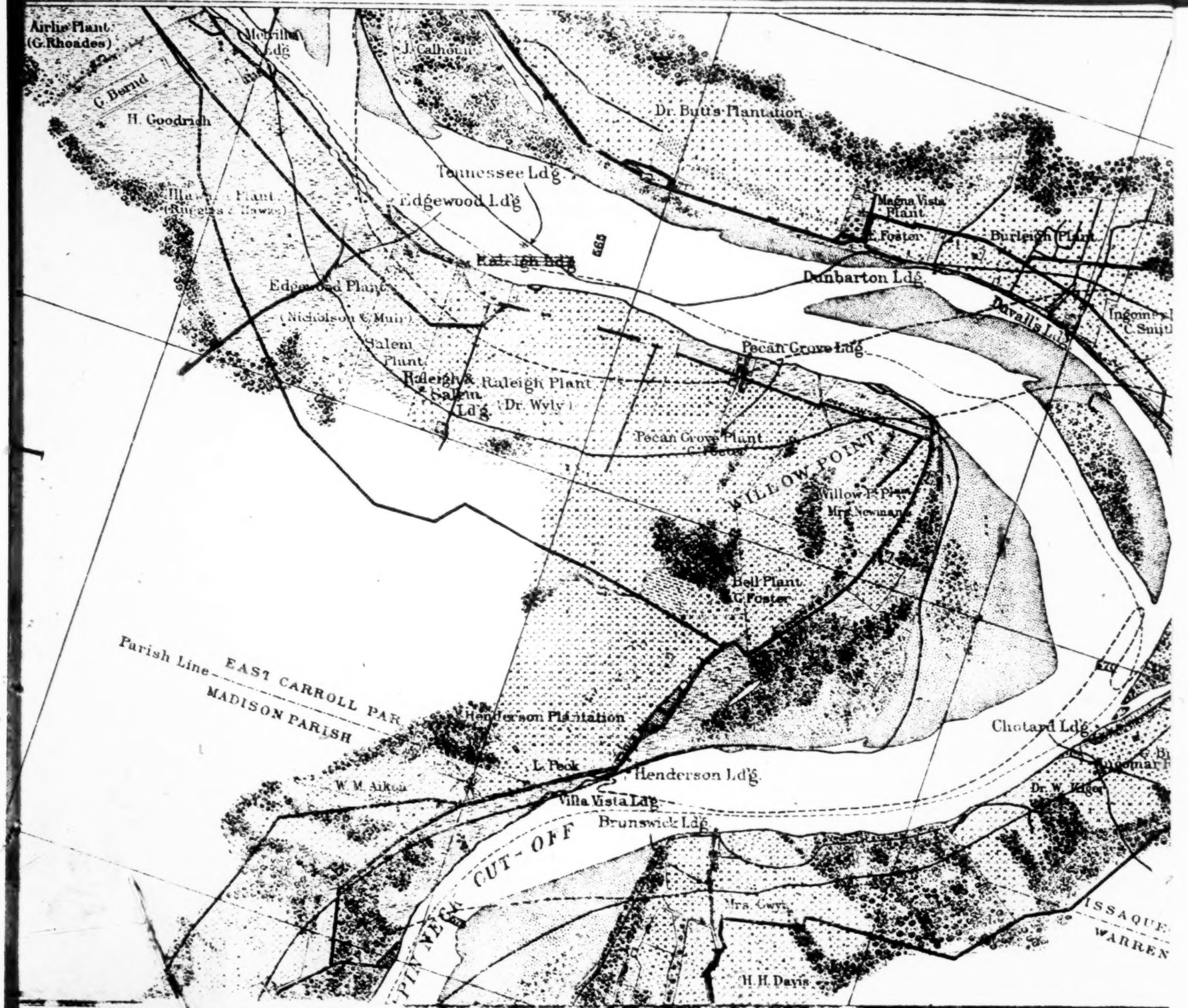
It shows the Louisiana shore to have caved along the north side of Sections 1, 2, 3, and 4, the river there since the 1824 land survey having moved south about one quarter of a mile. From the line dividing Sections 4 and 5 where little or no change has occurred, down to Section 9 the river had changed its channel to the eastward, the new channel being at its most easterly point in front of Section 7 and there approximately a mile and a half east of the channel as shown by the 1823 survey. The course of the river after reaching Willow Point has also changed, it then flowing in a southeasterly direction, whereas it had formerly flowed in a southwesterly direction. Tullos Island, or Island 98, is shown divided into two parts, this apparently having been done by the chute shown running between the upper and lower island, all of which save the lower end had closed up. The upper island composed of a part of Section 20 of original Tullos Island had extended in a northerly and westerly direction; the lower island, although greatly reduced in size, had extended slightly to the east, the growth in that direction apparently being at the expense of the old chute which is shown much narrower than by the 1823 survey.



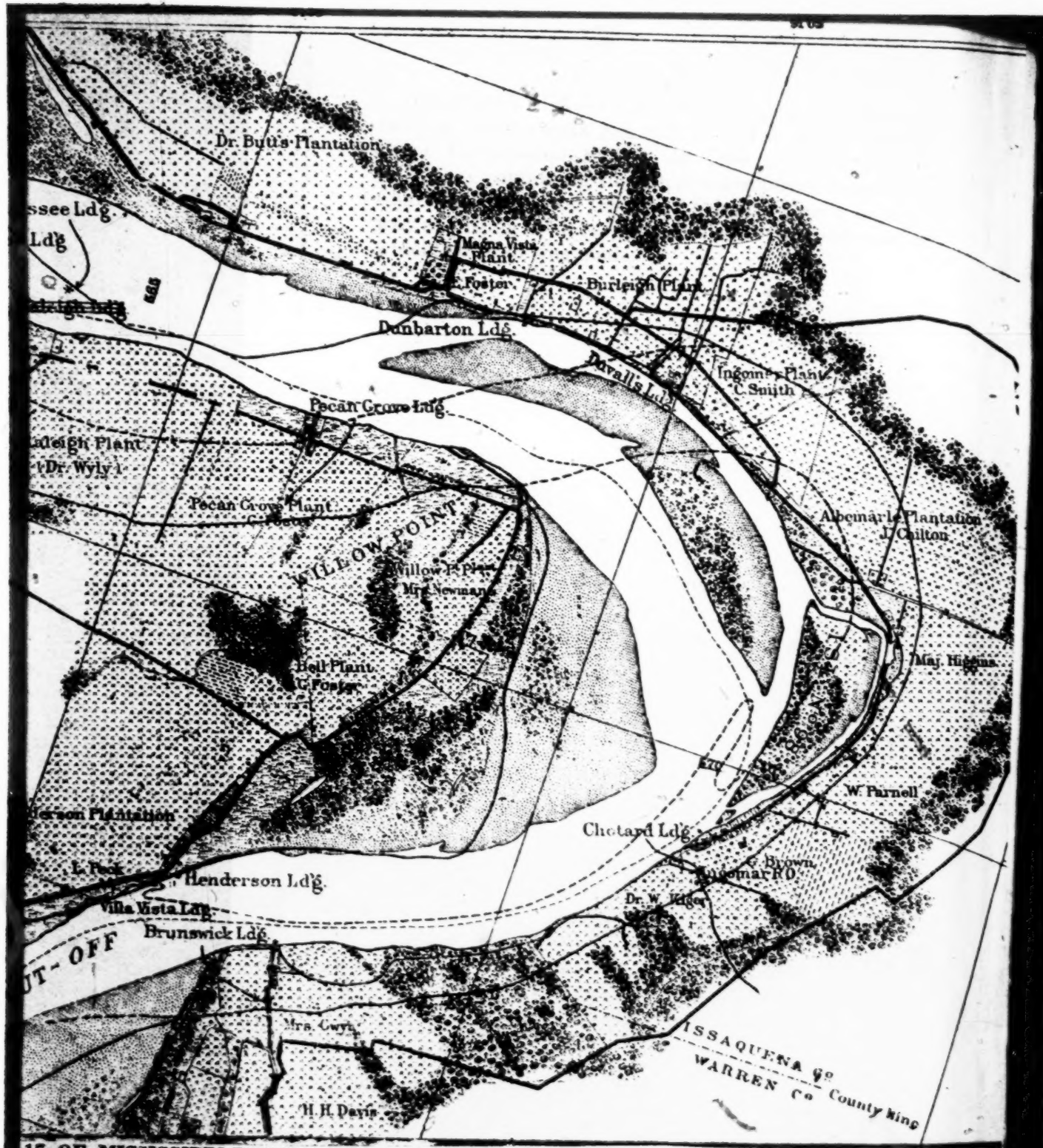
COMPLAINANT'S EXHIBIT "M", CHART 45, MISSISSIPPI RIVER COMMISSION SURVEY OF 1882.

"e next map, Sheet No. 17 of the Mississippi River ... ission Survey, which is complainant's exhibit "C" "s superimposed upon the map of 1882, the shore line the channel of the river as it existed in 1894. This "on a smaller scale than Chart 45 and is for gen- ·ı non-technical use. It does not show the same char- oı detail as Chart 45, omitting all data with refer- o government sights, contours, and elevations of the ...d soundings in the river.

Defendant's Exhibit 4-A-B-C, blue prints of the original field or work sheets No. 5, 5½, and 6 of the Mississippi River Commission Survey of 1894 does show these details, they containing the same character of data shown on Chart 45, Survey of 1882, and being prepared in the same way and being in all respects similar to the field sheets from which chart 45 was made.



COMPLAINANT'S EXHIBIT "C" SHEET 17 OF MISSISSIPPI RIVER COMMISSION SURVEY OF 1882. EDITION OF



17 OF MISSISSIPPI RIVER COMMISSION SURVEY OF 1882. EDITION OF 1900.

ıd Exhibit 4-A-B-C s·ow that the Louisiana
ıorth side had caved to a very great extent,
ılly up-stream to the west from Willow Point and
g almost to nothing at the point. The direction
low from the point had changed from the southeasterly
rec·n of 1882 to a northeasterly direction, the river
ıandoning its old bed, cutting around the head of and
o the north and east of upper and lower Tullos Island,
traddling and enlarging the original chute between Tullos
sland and the Mississippi shore and making it the new
hannel of the river. In making this new channel the
iver is shown to have cut into the main Mississippi shore
orth and northeast of Tullos Island the full width of the
iver or more, while towards the lower end of the island
there had been less caving of the Mississippi shore; the
widening of the chute there b·ing mainly at the expense
of the island, the southern and eastern part of which is
shown to be in the channel of the river. The old 1882
hannel is shown filled almost level across, twenty feet
bove the level of the then (1894) channel and twenty to
enty-five feet lower than the island.

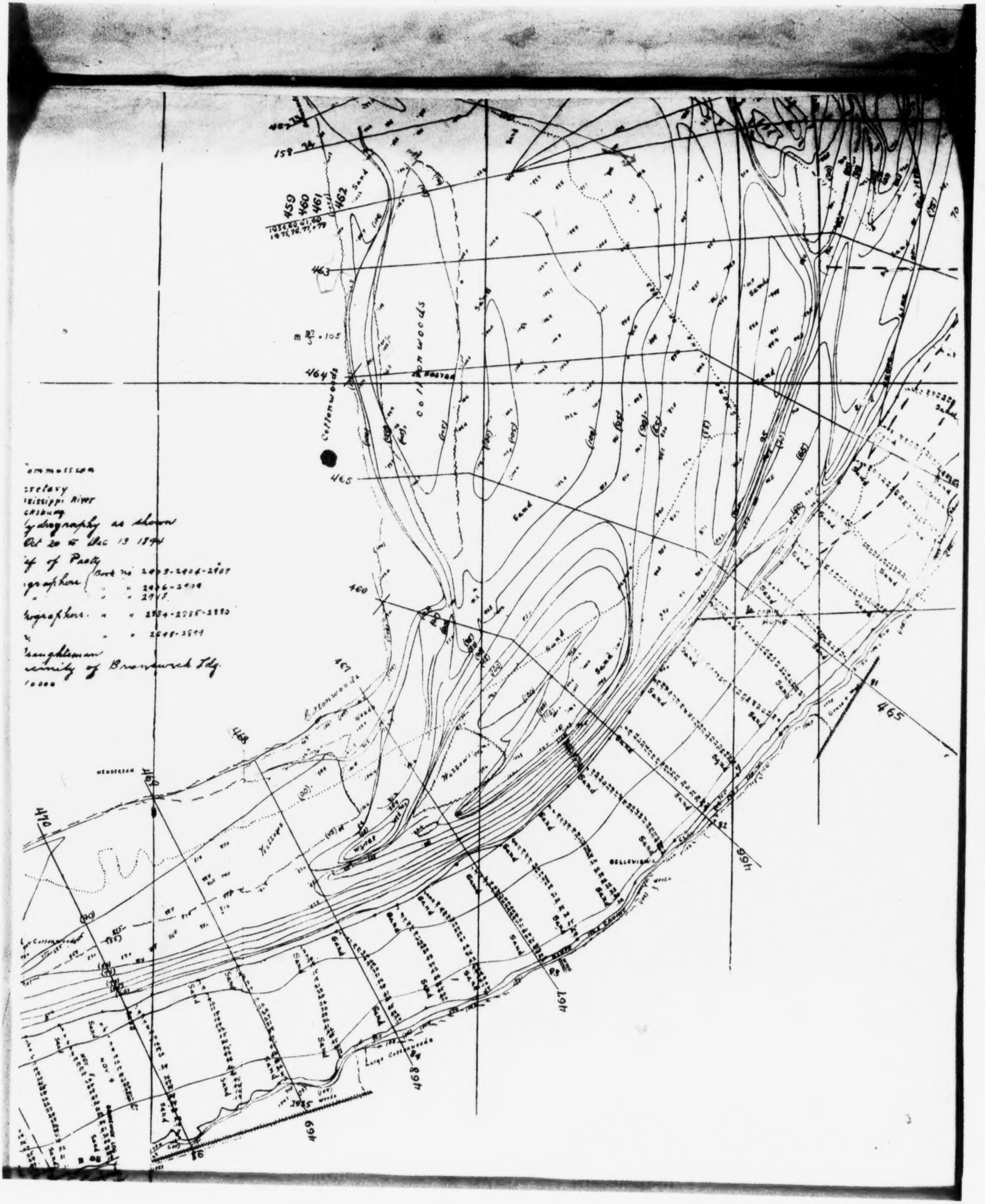
Mississippi River Commission Chart No. 47, survey
1913 and 1915, is the next map of that portion of the
ver here under consideration. This chart shows the same
haracter of detail as Chart 45 of the 1882 survey and
sheets 5, 5½ and 6 of the Mississippi River Commission
Survey of 1894. It shows that the river had returned to
its old 1882 channel, not, however, until parts of Sections
8, 9, 10, 15, 16, 17, 21, 22, and 29 T. 9 N. R. 8 W. had
caved into the river on the Mississippi shore, and all of
this territory not actually occupied by the bed of the river
had been added by accretion to Island 98, or "Newman's
Tow Head," so-called on the chart.

There is no postive testimony in the case showing how the river changed from its 1823 to its 1882 channel. The maps mutely testify to the radical change that occurred; the witnesses testify to the existing physical facts which circumstantially explain how it occurred.

There is no dispute between the testimony of the witnesses offered for the complainant and for the defendant with reference to what occurred subsequent to the making of the survey by the Mississippi River Commission in 1894, at which time the channel of the river was to the east of the location of Tullos Island as surveyed in 1823 and 1882. This testimony shows without dispute that from 1894 until 1912 the Mississippi River rapidly ate into the Mississippi bank and that the territory on the westward side of the river, originally surveyed as Tullos Island but at that time connected to the Louisiana shore by the old filled-up 1882 channel, rapidly built towards the Mississippi shore by accretion; that in 1912 or 1913 the river made a sudden change in its channel, cutting across the neck of the so-called towhead at the point where the old 1882 channel had been, scouring out the old riverbed and re-establishing itself there. The conditions shown on Mississippi River Commission Chart No. 47 are substantially as they are today, except that the 1894-1913 channel around the island has now become so filled up as to be unnavigable.

COMPLAINANT'S CONTENTION

It is only with reference to what took place between the making of the Mississippi River Commission Survey of 1882 and its survey of 1894 that complainant and defendant really are at issue. The theory of the complainant is set forth in its brief, pages 8 to 12, under the heading "Statement of Facts." This theory briefly is, and the evidence of complainant's witnesses tends to show, that the Louisiana shore gradually built by accretion in a northeasterly direction towards Mississippi, the river cutting into and encroaching on Mississippi territory as it gradually moved north and east, and the Louisiana shore progressively following the encroachment; that this con-


Commission
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Hydrography as shown
Oct 20 to Dec 13 1894
Chief of Party
Topographer (Sheet No 2903-2904-2907
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" " 2911
Topographer " " 2894-2895-2910
" " 2898-2899
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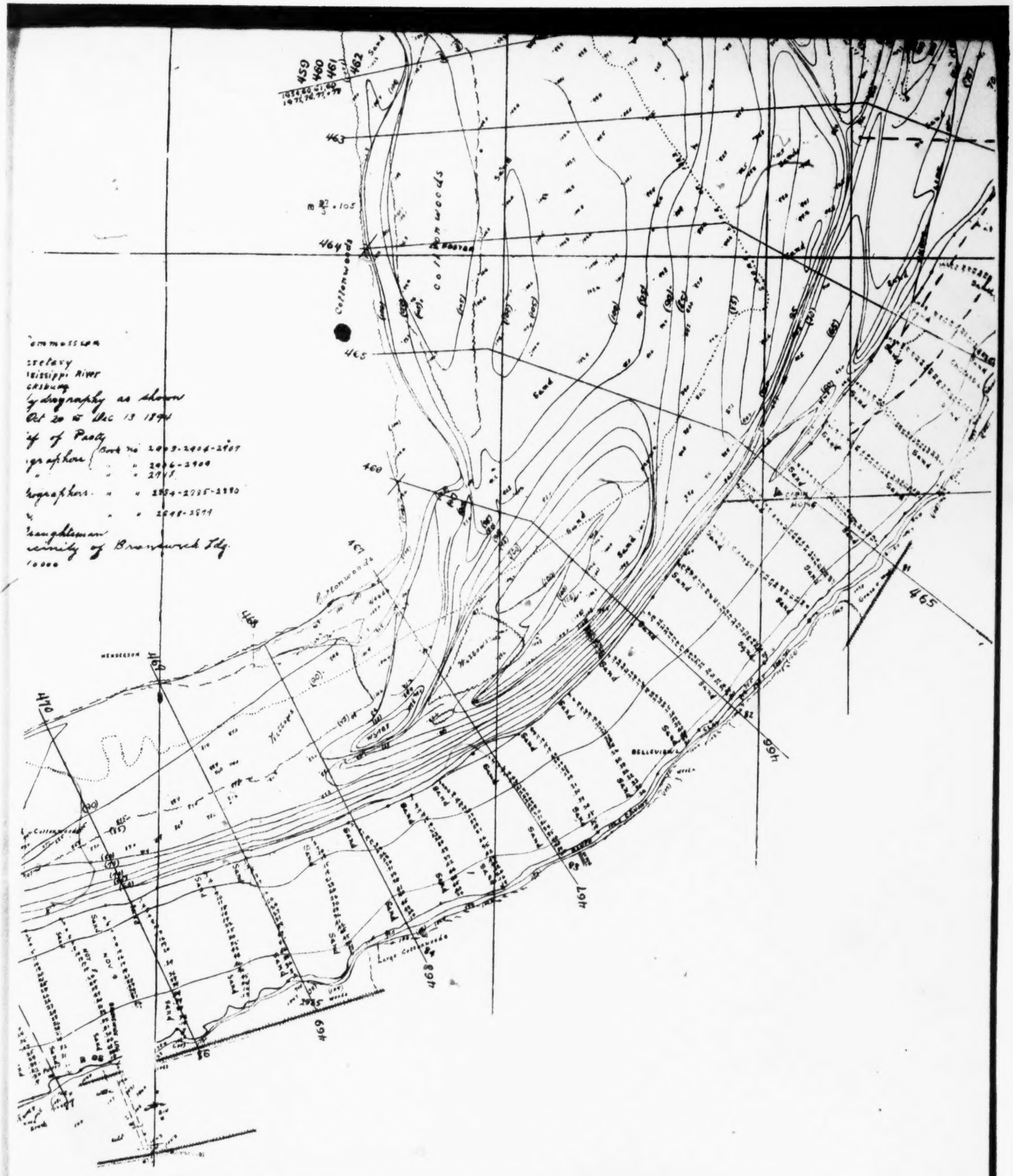
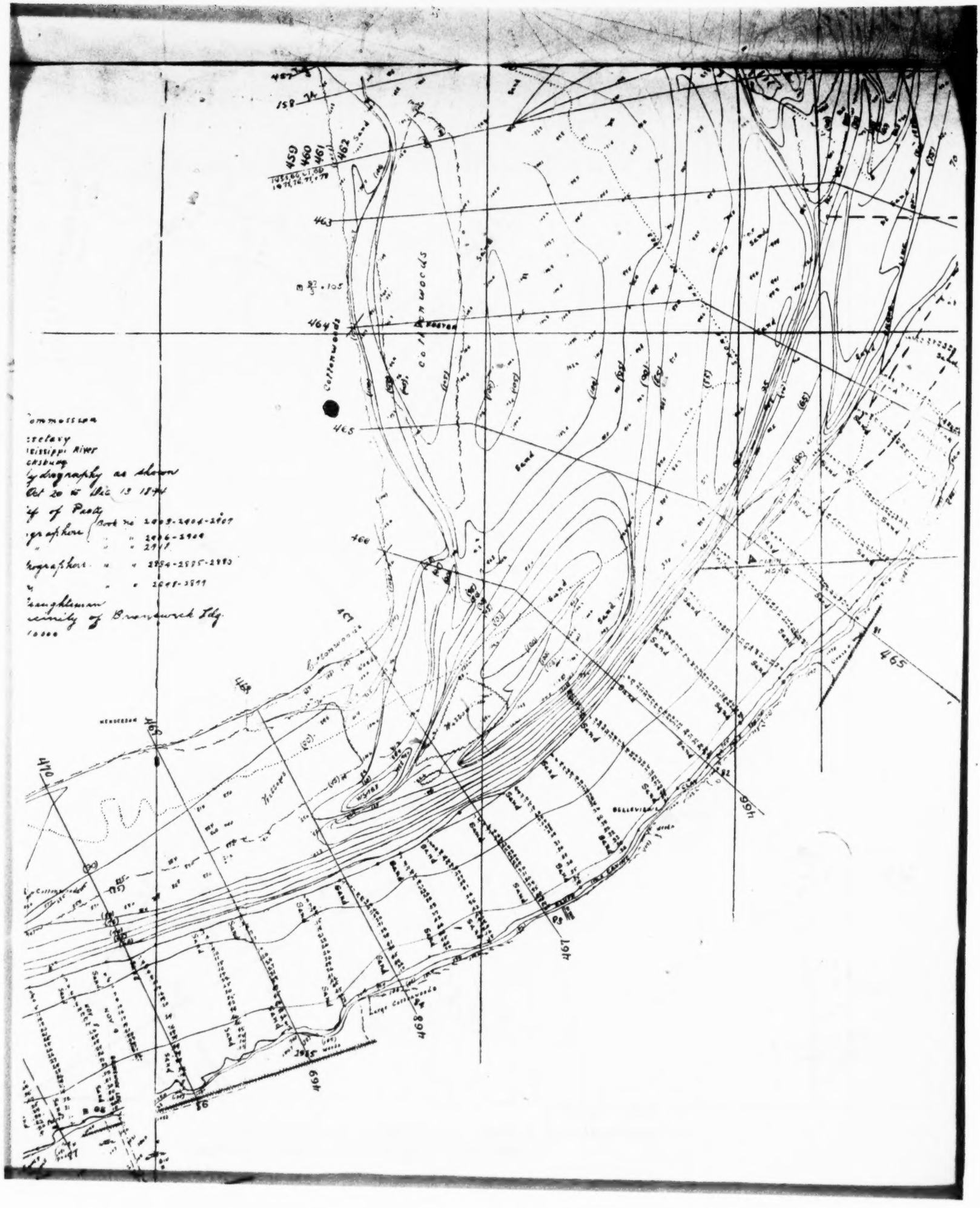


DEFENDANTS EXHIBIT 4A, SHEET NO. 5, MISSISSIPPI RIVER SURVEY OF 1894,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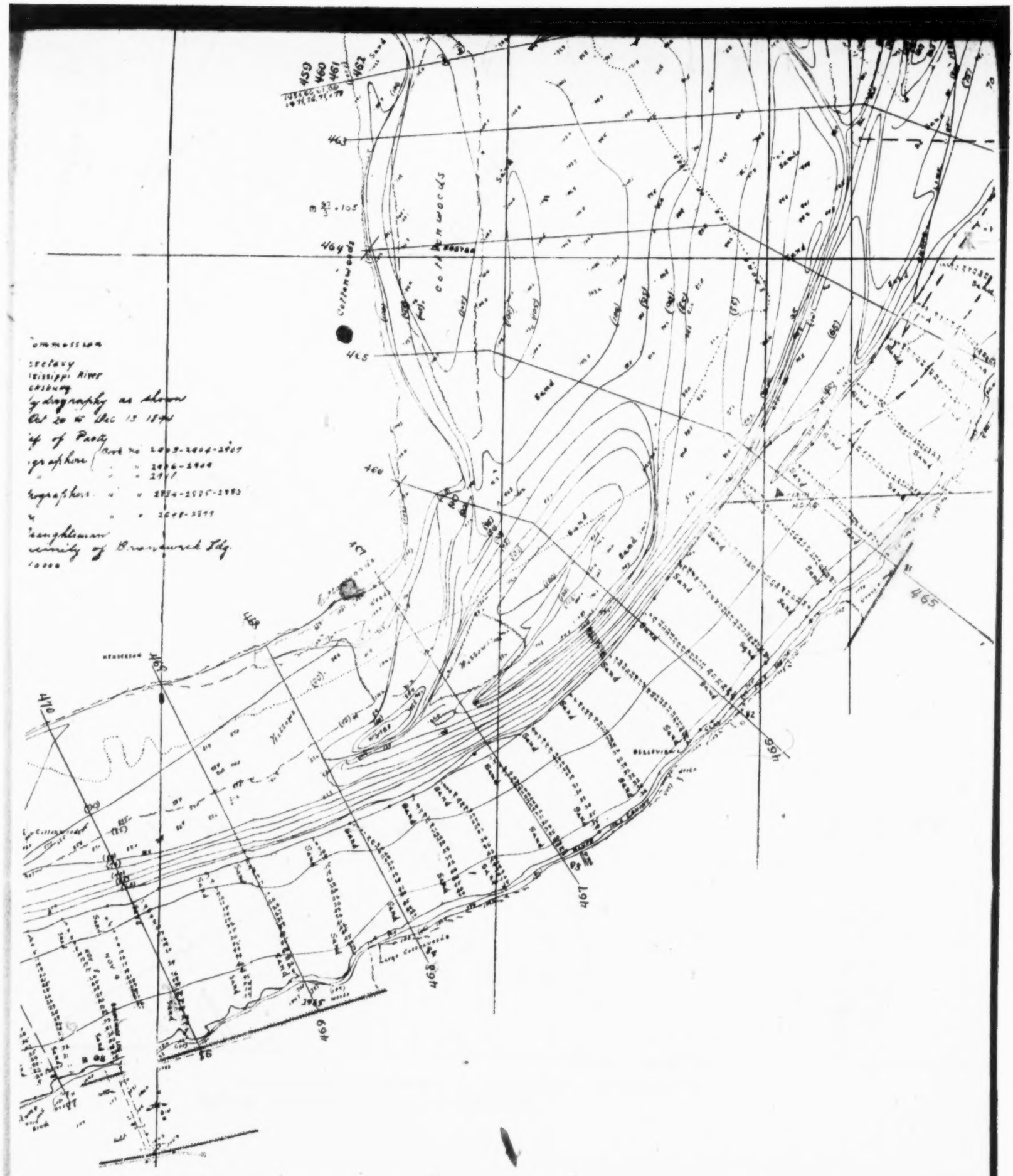
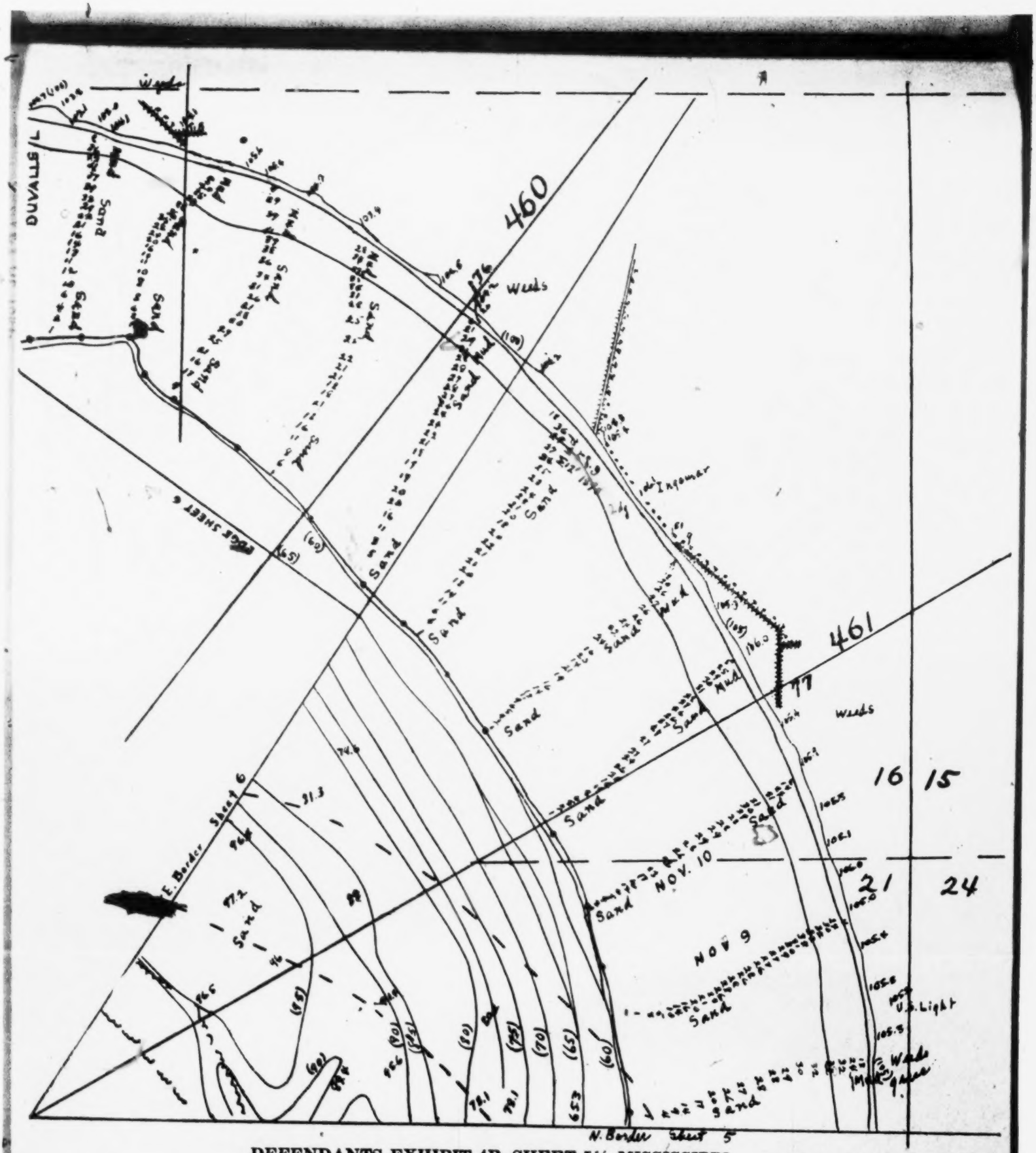
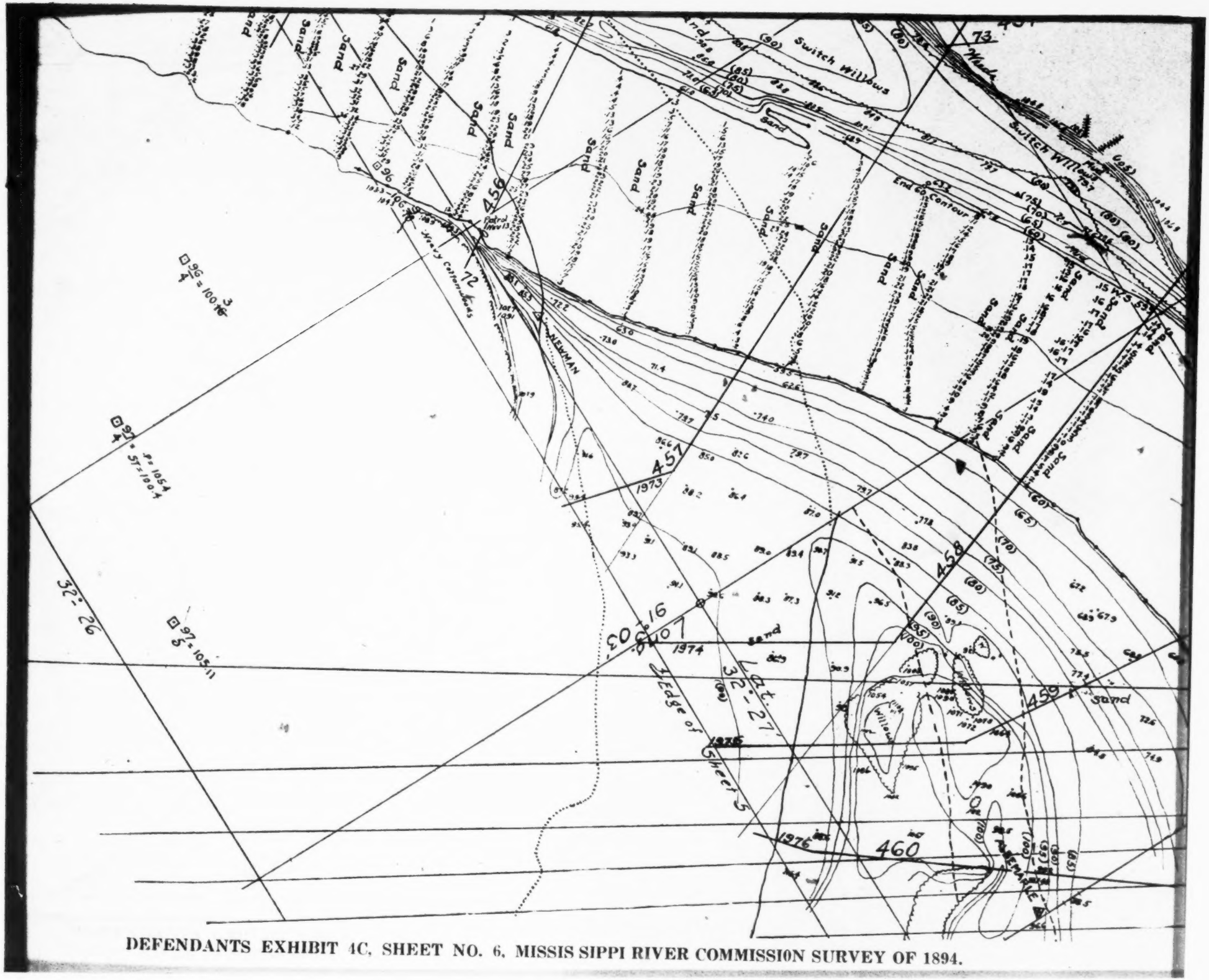


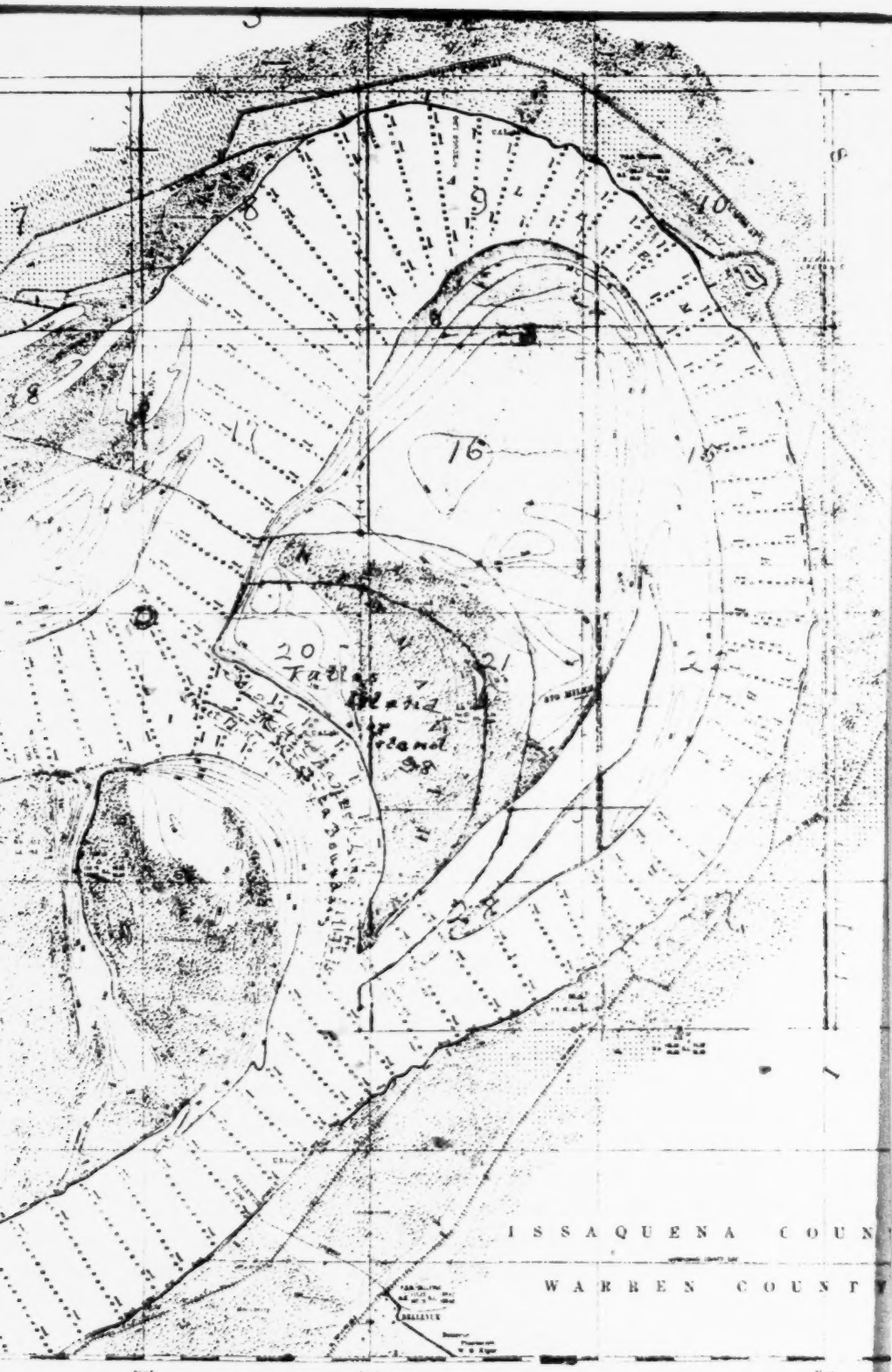
DEFENDANTS EXHIBIT 4A, SHEET NO. 5, MISSISSIPPI RIVER SURVEY OF 1894.



DEFENDANTS EXHIBIT 4B, SHEET 5½ MISSISSIPPI RIVER COMMISSION SURVEY OF 1894.



DEFENDANTS EXHIBIT 4C, SHEET NO. 6, MISSIS SIPPI RIVER COMMISSION SURVEY OF 1894.



"DEFENDANTS EXHIBIT 6-D, CHART 47, OF MISSISSIPPI RIVER COMMISSION SURVEY OF 1913-15."

dition continued until all of Tullos Island, and much of the Mississippi mainland, was washed away and until the Louisiana shore by accretion had built over the location formerly occupied by Tullos Island and had extended its northeastern limits about one and one-half miles east and north of the original eastern boundary of Tullos Island.

DEFENDANT'S CONTENTION

The State of Mississippi bases its defense on two propositions:

1. Prior to 1882.

The complainant has failed to prove that the Mississippi River gradually moved eastward from its 1823 channel to its 1882 channel, and that the Louisiana shore line progressively followed it by accretion. This being true, the direct and positive testimony of witnesses showing that accretions attached to the west shore subsequent to the year 1882 wholly fails to prove that such accretions became attached to territory belonging to the State of Louisiana. The complainant, State of Louisiana, has failed to establish its base: its starting point.

2. Subsequent to 1882.

It is the theory of the defendant and its proof tends to show that subsequent to the year 1882 the Mississippi River above and to the west of Willow Point cut into the Louisiana shore deflecting the course of the current from a southeasterly direction to a northeasterly direction; that because of this deflection in its course, the river cut around the head of and to the north and east of what was left of Tullos Island, scouring out the old chute between the Island and the Mississippi shore; and making a new channel there; that the old bed of the river filled up so that Tullos Island became attached to the Louisiana shore; that the river continued to cave the Mississippi shore, adding to the island by accretion until the year 1912 or 1913, when it suddenly abandoned its new channel and went back to the old 1882 channel, leaving Tullos Island again in truth an island, but greatly enlarged by the accretions added thereto.

ANALYSIS OF THE EVIDENCE

For the purposes of this argument, the evidence introduced on the trial of this cause will be treated in three subdivisions:

First, that dealing with the changes in the Mississippi River at the point in question, between the time of the original governmental land survey of 1823 and 1824, and the Mississippi River Commission Survey of 1882.

Second, that dealing with the changes in the river between the time of the Mississippi River Commission Survey of 1882 and the Mississippi River Commission Survey of 1894.

Third, that dealing with the changes occurring in the river subsequent to the 1894 survey.

As has been previously stated in this brief, the maps introduced in evidence show that between the years 1823 and 1882 the river in the vicinity of Willow Point had moved to a new channel about a mile and a half East of its 1823 location. There are no witnesses to testify from personal observation or knowledge whether this change from the 1823 channel to the 1882 channel was the result of an accretion or an avulsion. The testimony of all the witnesses is given relative to conditions and changes occurring since 1882, complainant's witnesses testifying to accretions to the Louisiana shore line as it then existed (subsequent to 1882) and the gradual shifting of the river towards the Mississippi shore. If the river had in fact gradually moved Eastward from its 1823 to its then channel and the Louisiana shore as a result of accretion had followed it, then the testimony of complainant's witnesses relative to accretions subsequent to that time, shows them to have become attached to Louisiana territory even though the Louisiana shore line was then a mile and a half East of the line as originally surveyed in 1824. On the other hand, if the change in the channel of the river between the years 1823 and 1882 was the result of an avulsion, the testimony of complainant's witnesses has only shown that the accretions were attached to land then on the Louisiana side of the river, but land which in fact belonged to Mis-

sissippi. With these preliminary remarks, the evidence will be discussed and analyzed in the order above set forth.

FROM 1823 TO 1882.

Complainant's Exhibit "M," Mississippi River Commission Chart No. 45, Survey of 1882, with the 1823 and 1824 governmental land surveys superimposed on it shows the difference in the location of the channel of the river in the years 1823-24 and the year 1882. Chart 47, Survey 1913-15 shows the channel of the river to be in identically the same location as in 1882. R. p. 183, 184. These charts show in detail the topography of the land now on the Western mainland lying between the 1823 shore line and the 1882 and 1913 shore line. A depression slightly to the East of the location of the 1823 channel, not named on the charts, but locally known as St. Francis chute, is clearly shown on each of them. Witnesses both for complainant and defendant show this depression to be the old filled-up 1823 river channel.

The testimony of the complainant's witness, George Prince, shows that he is familiar with this old 1823 channel. R. p. 39.

The complainant's witness, George Newman, is also familiar with this channel; his testimony showing that it runs in a Northeasterly direction from about Hendersons until it reaches the present river channel at about Willow Point. R. pp. 55, 56, 58, 59 and 60.

Defendant's witness, Lawrence Townes, testifies that he is familiar with this old river channel: St. Francis Chute; that it is on the Louisiana mainland and runs in a southerly direction down from Mrs. Newman's plantation, (Willow Point). R. p. 232 and 233.

The defendant's witness, Etna J. Albrittian, is the owner of some of the land in controversy under the Mississippi patents. He has closely investigated the lands, had them surveyed, and gone over them with the surveyor. With reference to the St. Francis Chute, or the old 1823 channel, the witness in substance, testified as follows:

That in October, 1924, with the river stage at 38.9 at Vicksburg, the water was backed out into this old river channel. He followed it from Hendersons until he reached the river at Willow Point, finding it filled with water the entire way. The bank line of this old channel was clearly discernible most of the way, the banks showing about ten feet above the level of the chute. This chute or channel was shown by the survey to be in the same location as the channel of the river in 1823. R. p. 245, 248, 251.

Complainant's proof tending to show that the change in the channel of the river between 1823 and 1882 was the result of accretion and not of avulsion is supplied only by one witness, C. H. West. His testimony is based upon two maps, one of which was made in 1866 and the other in 1870. The 1866 map was not introduced in evidence, but the witness shows by his Exhibit "G" the bank line on the Louisiana shore, presumably taken from this map. R. p. 147.

The other map introduced as an exhibit to this witness's testimony was a survey of what is known as Hopkins Island, as it existed in 1869-70. Comp. Exhibit "BB". R. p. 148.

With these maps as the only facts before him the witness undertakes to give a history of the change in the river during this period of time, expressing as his opinion that the river progressively moved Eastward and the Louisiana shore line followed it, being built by accretion. It should be kept in mind that there is no competent evidence of the 1866 survey and that the 1869-70 survey of Hopkins Island did not undertake to be a survey of either the Mississippi or the Louisiana shore line, but only of the island itself. It should also be borne in mind that none of these maps, except the 1882 survey showed the topography, the contours or elevations of the ground. The testimony of this witness is merely his opinion based only on the fact that the shore line in the different years was East of its former location.

FROM 1882 TO 1894

In explaining how the river changed from the 1882 channel to the 1894 channel, the complainant's witnesses at-

tempted to establish the fact that Tullos Island completely washed away, and that the Louisiana shore progressively followed the river to the Eastward by accretion, as the Mississippi shore and the Island caved into the river.

Complainant's witness, T. B. Beard, a brother-in-law of Walter Newman, the owner of Willow Point Plantation, has been familiar with the territory in controversy for about fifty years. At the time of his earliest recollection, a bar extended out from Willow Point about a mile and a half, or two miles, and continued to grow year by year until, in 1912, it was three or four miles from the mainland. R. p. 87 and 88. He denies the existence of Island 98 during this period of time. R. p. 89, 95.

Complainant's witness, E. T. Purnell, moved to the Purnell plantation opposite Island 98 on the Mississippi River in 1880. R. p. 260. The channel of the river was then on the West side of Island 98 with a chute between the Island and the Mississippi shore. R. p. 262. Island 98 was caving on the West side and finally disappeared in 1893, '94 or '95. R. p. 264, 282.

During this period of time the Louisiana shore was building out toward Mississippi. R. p. 265. Between the towhead and the mainland there was a depression through which in high water the boats would make a cut-off. R. p. 268, 269.

N. B. Captain Marshall's testimony shows this depression to be the old filled-up 1882 river channel.

The witness is familiar with Hopkins Island, describing it as being Northwest of Island 98. Hopkins Island did not wash away, R. p. 275, but the channel of the river changed around it. R. p. 276.

N. B. What this witness called Hopkins Island is shown conclusively by him, in referring to the map, Comp. Ex. "H" to be upper Tullos Island. R. p. 277.

Joseph V. De La Hunt, witness for the complainant. A steamboat captain and familiar with the river at the point in question since 1880. Island 98 disappeared. R. p. 289, 292. Is familiar with Hopkins Island, the channel of

the river being between it and Island 98; west of Island 98 and east of Hopkins. R. p. 292-298.

Hopkins Island never washed away. It was there in 1908. R. p. 298.

N. B. What this witness designates as Hopkins Island was evidently upper Tullos Island.

Captain Charles H. West, member of the Mississippi River Commission since 1910. (R. 129.) His first observation of the river at the point in question was in 1893. R. p. 156. Has been thoroughly familiar with the river there since 1898 when he was appointed Chief Engineer of the Mississippi River District. R. 130. The witness explains the various maps and blue prints attached as exhibits to the original bill of complainant, and with them as a basis undertakes to give a progressive history of the changes in the river. He testified that the river gradually ate into Tullos Island and the Mississippi shore and that the Louisiana shore progressively followed it, being built by accretion. That this condition continued until all of Tullos Island was washed away and the Louisiana shore had built over its former location; that then by a sudden change in the course of the river a new channel was cut across these accretions, leaving them an island.

In giving his testimony the witness considers only the shore lines drawn on the maps, giving no consideration to the elevations and contours shown thereon. R. p. 140. He attempts to explain why, in preparing his blue print Exhibit "I," showing the changes in the river during this period of time he ignored the topographical details shown on the map from which his exhibit was prepared, and in the location where the islands were shown on the map, wrote in the word "accretion." As to the soundness of his explanation, the court may best judge by reading it. R. p. 155-156.

The witness denies that there was a general topographical survey of this territory made in 1894, but admits that the original field notes of this 1894 survey are on file in the office of the Secretary of the Commission. He states

that these field notes will show only the 1894 shore line. R. p. 157, 158.

N. B. The witness is conclusively shown to have been mistaken in these statements by the testimony of Captain Marshall who obtained from the Commission and introduced in evidence, blue prints of the original field or work sheets of the 1894 survey showing all details of topography, contours, and elevations on the land and soundings in the river.

William Miller, witness for defendant. A colored man born in 1875. Lived on Eustacia plantation directly in front of Island 98 until ten years of age. Island 98 had 250 acres. R. p. 302. Moved to Brunswick, eight miles below Eustacia, stayed there ten years, visiting back at Eustacia every week. R. p. 310. Moved to Vicksburg, stayed there from 1897 to 1916, working as a roustabout on the steamboats, "Annie Laurie," "Ruth," "Chattahoochie," "Belle of the Bend," "Ben Hur," "Cardee," "Webb Oliver." Passed the island six times a week. Island 98 never washed away, although all but about 75 acres of the upper part did cave into the river. R. p. 304. A part of the island was in cultivation, a man by the name of Scruggs living on it. R. p. 305-306.

Lawrence Towns. 59 years of age. Colored. Lived at Chotard in 1880. Familiar with Island 98 which he called Scrugg's Island. Also with Hopkins Island. R. p. 220. The witness leased the island and raised hogs on it, eight or nine hundred head. R. p. 225-227.

The witness is familiar with what he calls Hopkins Island, it being just a little to the north and west of Island 98. R. p. 231-232.

Was a roustabout on steamboats for ten years, passing by Island 98 three or four times per week. R. p. 220. The channel was on the west side of the island except in high water. A part of the island washed away, but not all; some of it is still there. R. p. 221-222.

R. E. Foster. Age 75. Member of the Legislature. Owns three places, the lower place in sight of Tullos Island, or Scruggs' Island. Has lived there since 1882. Island 98

never completely washed away. R. p. 209, 210. The channel changed frequently at this point. R. p. 211.

E. J. Albrittain. Is thoroughly familiar with the territory in question, especially as to the physical conditions existing. Holds Mississippi patents to some of the land in controversy. R. p. 243. Went over the land in 1924 with a surveyor. R. p. 256, 257. The witness with the surveyor located the old chute line between the Island and the Mississippi shore in 1823. This channel was clearly discernible in the same location as the old chute in 1823 with lakes interspersed through it. He followed it to where it runs into the present river channel. R. p. 245, 246.

The territory to the West of this old chute line, running up to the river on the West and paralleling the old chute line on the East, is covered with large cottonwood and willows. R. p. 243. This area between the old chute shore line and the present channel of the river is composed of clay soil. The river bank there is about 25 feet high. The largest timber on the Island grows on this high ground, and immediately East of the old chute the growth is of small willows. R. p. 244. The character of the soil and the character of the timber here is the same as that on the old Mississippi mainland. R. p. 252.

Captain H. M. Marshall. Civil engineer since 1877. Lives at Vicksburg. Has been in the employ of the United States Government for forty years. Has been in the United States Engineer's office at Vicksburg from 1888 until 1924. R. p. 168 and 169. Is thoroughly familiar with the territory in question. There in 1890, in charge of the levees in that immediate vicinity. R. p. 175. The witness first refers to Sheet 17 of the Mississippi River Commission—Complainant's Exhibit "C"—showing Island 98 divided into two parts. R. p. 171.

In 1890, during the high water, witness was in charge of the levees in this territory, and both parts of the island were there then. He saw the mail boat come up the chute between the mainland and the islands. R. p. 185.

The witness next introduces Exhibits 4-A-B and C, three

blue prints of field sheets numbers 5, 5½ and 6 of the Mississippi River Commission Survey of 1894, certified to by the Secretary of War as correct and official maps. The scale is 1:10,000 and the maps show the same character of detail as Chart 45 of the 1882 survey.

N. B. Captain West in his testimony denied the existence of these maps. Counsel in their brief evidently blindly followed Captain West's testimony, denying and ignoring their existence.

Captain Marshall described the topographical details shown on these maps, showing that at the time the survey was made in 1894, there was high ground of the same elevation, or a slightly higher elevation, than Tullos Island in 1882 and located in identically the same place as the islands were at that time; that to the West of this high ground and at the place where the channel of the river was situated in 1882, there is low ground from twenty to twenty-five feet higher than the water level. R. p. 172, 173:

> "A. Exhibit 4-A, in the upper hight hand corner, shows high ground, an elevation of 110, Memphis data. The line (fol. 257) running around the high ground shows the timber line. This high ground is on the Western side or towards Louisiana of the Mississippi river. This 4-A is sheet No. 6 of the blue print issued by Mississippi River Commission, certified by the Secretary of War. It is joined to sheet 5½ of the same survey and blue print marked Exhibit 4-B. On that 4-B the high ground extending down the river with the timber line marked thereon. Sheet 5½ of 4-B is continued down the river on Sheet 5. This sheet shows a continuation of the high ground down the Mississippi River with the timberline marked thereon. On these three sheets elevations are written, referring to Memphis data. They give the height of the ground. Height of the ground, as I have stated, is 110 at the upper end, and—
>
> Q. (Interposing.) The upper end of what?
>
> A. The upper end of the island. And it runs off

down to various numbers, 104, 108½, 107.4, 104.3, 109.5 —various numbers. That is on the high ground.

Q. That is Tullos Island you are talking about?

A. Yes, sir. To the West and at the upper end of Tullos Island are various numbers, giving the elevations—86.4, 86, 89, 85, 86, 90, which it will be noticed, the 90 is 20 feet lower than the 110. On the lower end of Tullos Island the figures written to the West of the Island, run 81, 85, 82, 84 and 95. On these three sheets the shore line of 1882 is (Fol. 258) marked along the Western limits or Western edge of Tullos Island. On the Louisiana side the bar line of 1882 is marked. To the East of this Island, is shown the channel of the Mississippi River at the time this survey was made in 1894.

Q. Is there anything else shown on that map, Exhibit 4, A, B, C, which would indicate the change of the main channel of the Mississippi River?

A. The fact that the Island elevation is over 100, which is about the elevation of the bank line on the Mississippi River shore. The location of the channel of the Mississippi River East of that high land shows that the River had gone around the upper end of the Island and was flowing to the East of the Island.

Q. Does that show that the Island was washed away or still there?

A. The Island could not have been washed away." And again on pages 173 and 174:

"Q. I don't know whether you have stated it or not, but is there anything else shown on the map which would indicate the change of the main channel of the Mississippi River?

A. The fact that the Island elevation shows a reading of 110 feet, and the water survey on the shore line shows a reading of 60 feet, is absolute proof of the fact that the Island was 50 feet above the water surface at the time of the survey, with trees growing on top of it. I can state of my own personal knowledge that in 1890,

four years before the survey was made, that Island 98, or Tullos Island, the island above it, had not been washed away, but was still in existence. Of course, everybody knows that (Fol. 260) an island cannot be washed away and then four years later be built back with big trees growing on it, as shown by this survey. There is another thing I want to show you. Up stream from this island shown on Exhibit 4-A, and Westward to the Louisiana side, the elevations of the ground surface are 20 feet lower than the elevation of the island, that is, the ground West of the island is 20 feet lower than the surface of the island. This low ground to the West of the island is in the location of the Mississippi River in 1882, which shows that the Mississippi River had gone around the head of the island and over to the East, and a bar had formed from the Louisiana side over to the head of the island. If the island had washed away and the accretions made from the Louisiana shore, this low ground could not have occurred if the Mississippi River had gradually moved over towards the State of Mississippi, building an accretion on the Louisiana shore. That accretion would have been adjacent—would have been higher adjacent to the Louisiana shore, and lower as the accretions were formed from year to year towards the Mississippi shore." (R. 173 and 174.)

Captain Marshall correlated the three blue prints 5, 5½ and 6 on one sheet, making a tracing so as to show on this tracing in one sheet, the location of the high ground, or islands, and the low ground to the West. On this tracing, the witness superimposed the section lines. He also prepared another tracing reduced to the scale of the Mississippi River Commission Charts No. 45 and 47.

"A. I have prepared a tracing from blue prints—from the three blue prints shown as 4-A-B-C, so as to put the river in that vicinity on one drawing and have marked the tracing Exhibit 4-A-B-C, on the lower right hand corner.

Q. All right, what does that show?

A. It shows in a clear way then what I have stated with regard to the blue prints. It is, as far as it goes, a fac simile copy of the lines and figures on those three sheets, 4-A-B and C. On that tracing, which is on a scale of 1 to 10,000, the scale on which the Mississippi River Commission surveys are platted in the St. Louis office, on these tracings I have drawn the section lines in this vicinity, showing sections 16 and 17 and some of 20, 21 and 28, covering Tullos Island as Island 98 and the Mississippi adjacent shore. Also on that tracing I have marked two lines in blue pencil along which I have written the North border of sheet No. 5, and the Southeast border of sheet No. 6, so that these tracings may be fitted over the blue print sheets to (Fol. 273) show that they are identical.

Q. You say the blue print sheets are what?

A. They are 4-A-B and C.

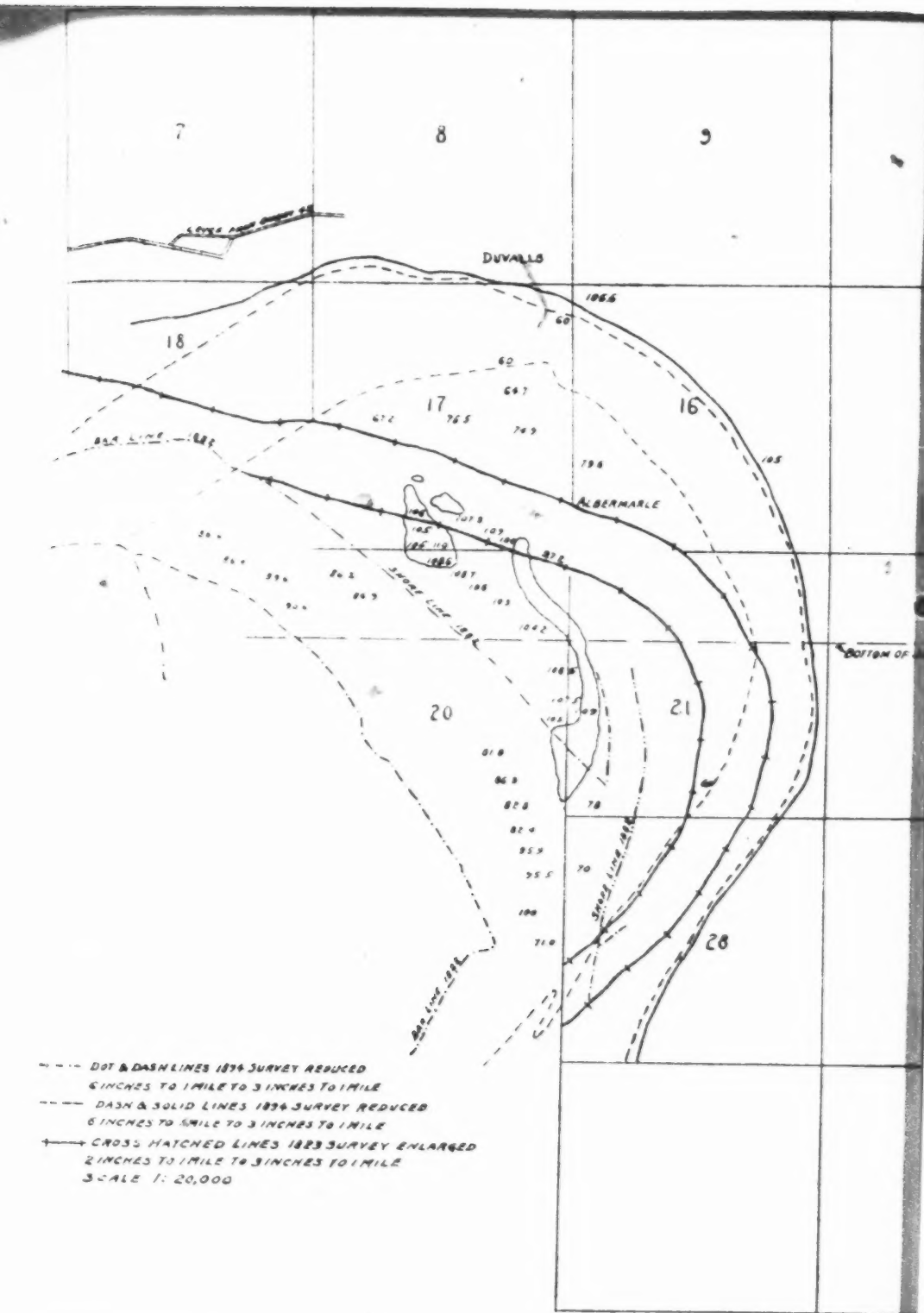
Q. From that then what, if anything?

A. In order to reduce this survey sheet 4-A-B and C from the 1, to 10,000 scale to the 1 to 20,000 scale, which is the scale on which the maps of the Mississippi River Commission are printed, I have prepared a tracing reduced to one-half size, otherwise identical with the tracing of Exhibit 4-A-B and C. This second tracing is marked in the lower right hand corner "Reduced from Exhibit 4-A-B and C."

Q. What does it show?

A. The same thing. It is a fac simile of the other tracing except as to size. It is one-half the size.

Q. You will call that exhibit what?



DEFENDANTS EXHIBIT 4D, TRACING REDUCED FROM EXHIBITS 4ABC.

A. I will call one Exhibit 4-D and one Exhibit 4-E." (R. p. 176).

The witness placed the tracing 4-E over complainant's exhibit "I," upon which complainant's witness, C. H. West, had witten "accretion." The tracing when so placed with the section lines coinciding, shows the high ground in the same location as the island, and the low ground in the same location as the river channel of 1882. Page 178:

"Q. State whether or not the 1894 survey maps of the Mississippi River Commission shows the island, and sheet No. 17 shows the upper part of Island No. 98, or Tullos Island with the island above on the West, the bar line of 1894 on the Western shore?

A. Yes, sir; the bar line is on the Western shore of the Mississippi River. I will state it the other way around. The river is the Eastern end of the island.

Q. Where is the island shown?

A. The island is shown on the 1894 map which you have asked about.

Q. And you say that the only place that Captain West could have gotten the blue print which he made was from the survey of 1894 and the survey of 1883?

(Fol. 276.) A. Yes, sir.

Q. Go ahead now, Captain Marshall.

A. On the Western side of the channel of the Mississippi River marked on Exhibit "I," 'Mid-river distance, Mississippi-Louisiana,' at the spot where Captain West wrote 'accretions,' appears the location of the low ground shown on sheets 4-A-B and C, which I have previously described.

Q. That is shown by placing your Exhibit 4-E over Exhibit I?

A. Yes, sir; with the section lines on 4-E fitting over the section lines on Exhibit I.

Q. Does any other drawing or map which you have

seen, except this map, or No. 3 of C. H. West, lose sight of the Island?

A. No, I have not seen any of the maps except the Mississippi River Commission maps which have been under discussion, the 1 to 10,000, 4-A-B and C, the one-inch to the mile, 17, Exhibit 3, these are the only maps that I know of, except the one issued with the superimposed lines on Sheet 17, showing the 1894 line, from which, I presume, Captain West prepared his Exhibit I. None of those shown was accretion, and none of them have the island left off. The Sheet 17, one inch to the mile, with the superimposed red line of 1894, shows the lower part of the upper of the two islands, and the upper part of the lower of the two islands, or Tullos (Fol. 277) Island, surrounded by the red line to the West of the Mississippi River." (R. 178.)

The witness also compares Chart 45 of the 1882 survey and 47 of the 1913 survey showing that the channel in 1913 was in the same location as the channel of 1882. The witness then compares Exhibits 3 and 5 to the testimony of complainant's witness, C. H. West, and shows the same thing:

"Q. Marked Exhibits 3 and 5 to the cross-examination of Captain West?

A. One is Exhibit 5 and the other is Exhibit 3. These last two are the tracings from which the blue prints were made, that were sent to me by Captain West. When placed one over the other so that the sections coincide, the mid-river distance on the Exhibit 3 is right down the middle (Fol. 287) of the channel shown on Exhibit 5, confirming comparisons that I made on Sheet 45 and Sheet 46 of 1882 with Sheet 47 of 1913-15.

Q. If the river had gradually eaten away the Mississippi side, and had caused accretions to form from the Louisiana side across to the Mississippi side, is it probable that the river bed of 1813-15 would have been in the river bed of 1882?

A. Of course, everything is possible.

By Mr. Dale: Objected to by complainant as incompetent evidence, being purely and solely the opinion of the witness, without any reason for said opinion.

Ruling reserved by the Commissioner.

A. I have stated the facts as shown by the 1894 survey, with the old bed partly filled up with sand twenty to thirty feet lower than the top of the land on the Island. I have shown that the channel filled up with sand was identically in the same location as the channel in 1882; and I now here show that the channel of 1882 is in identically the same location as the channel in 1913-15. Now, put the three together.

Q. Now, have you made that showing from the maps of the Government?

A. From the official maps of the Mississippi River Commission." (R. p. 184 and 185.)

The witness refers to Captain West's testimony and shows its inconsistencies and explains how the survey of the Mississippi River Commission of 1894 disproves his theory:

"Q. Please refer to the blue print which is marked Exhibit I to the State of Louisiana, complainant, which is a map by Captain C. H. West, and state what that shows?

A. The most striking thing on there is the word 'accretions,' which is written on the bar, showing between the bar line of 1894 and the bank lines of 1866.

Q. You have read Captain West's testimony, have you?

A. Yes, sir; I have read his testimony."

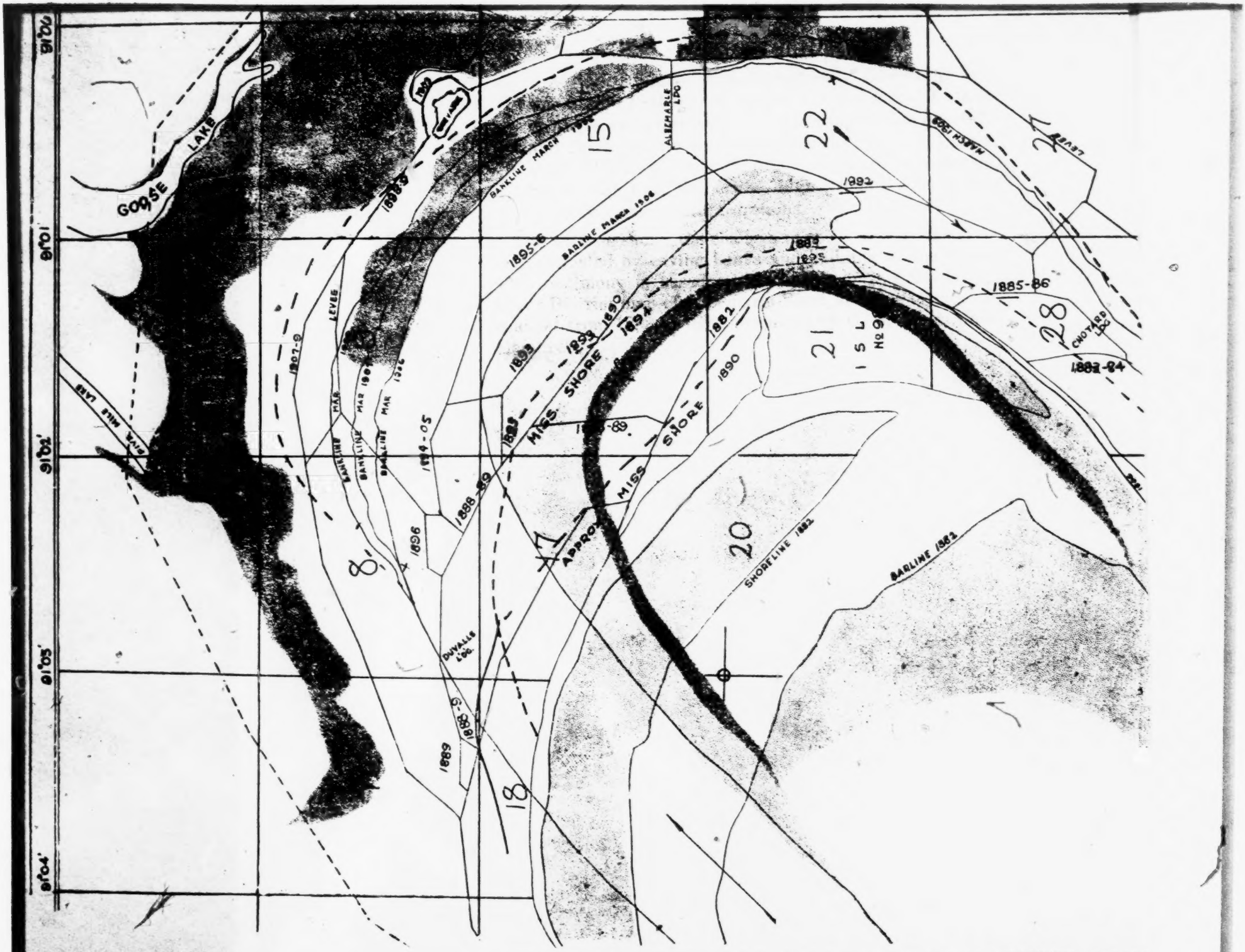
(R. p. 176 and 177.)

Bottom of page 177:

"Q. Is there anything in the Mississippi River Commission's Survey of 1894 that would justify designating this land on Exhibit I as accretions?

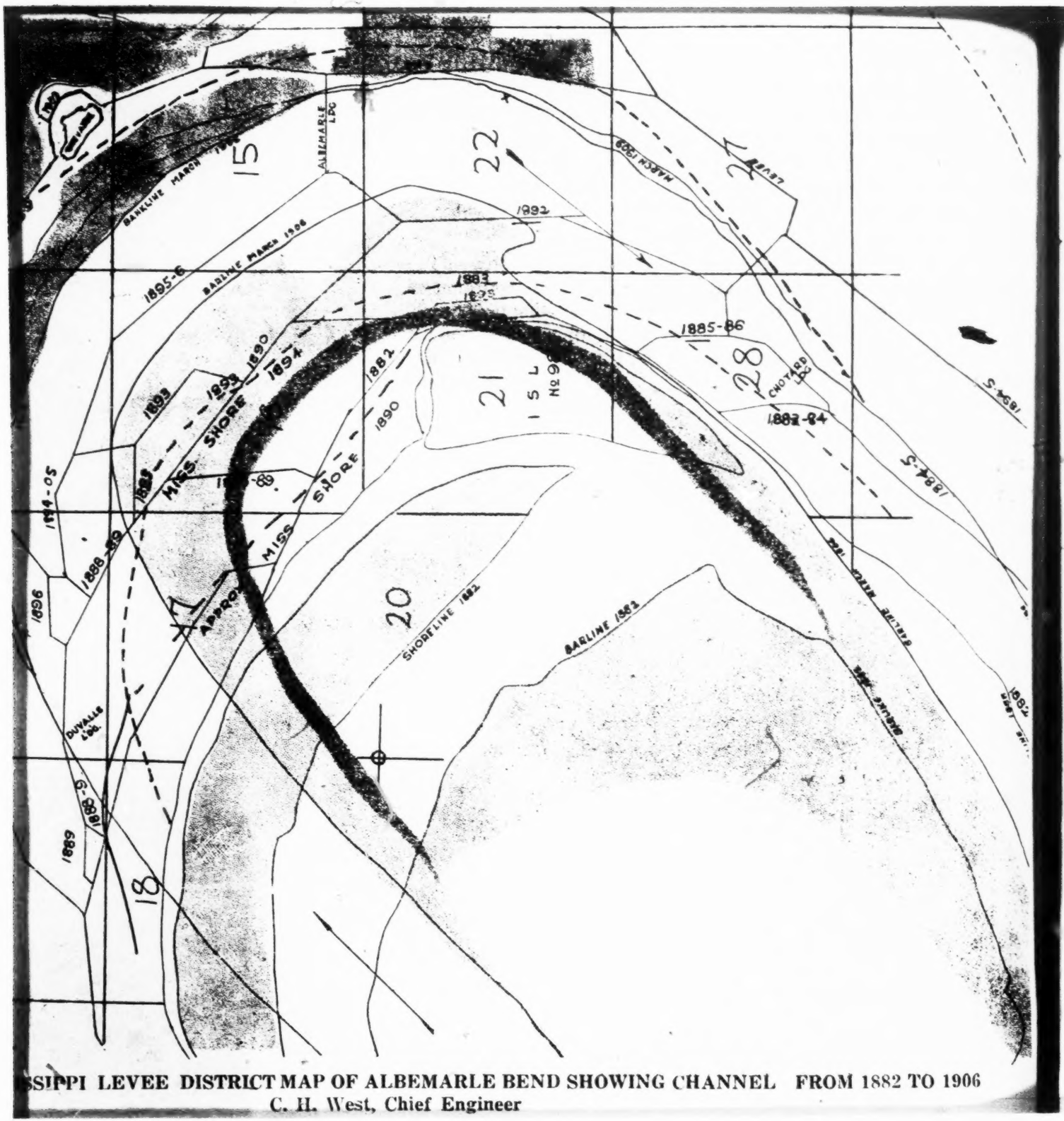
A. No. I have stated practically everything that was on the 1894 survey sheets, 4-A-B and C. I stated on there everything that is cognizant to this question, and there are no accretions marked there. I have studied them all, and there are no accretions marked there—bar line, timberline, high ground, low ground —nothing said about accretions.

The witness shows the changes in the course of the river as manifested by caving banks and building of the levees. This testimony is based on blue print of the Mississippi River District map of Albemarle Bend, showing changes in channel from 1882 to 1896, prepared by C. H. West, Chief Engineer.



"DEFENDANTS EXHIBIT 5, MISSISSIPPI LEVEE DISTRICT MAP OF ALBEMARLE BEND SHOWING CHANNEL FROM

C. H. West, Chief Engineer



SSIPPI LEVEE DISTRICT MAP OF ALBEMARLE BEND SHOWING CHANNEL FROM 1882 TO 1906

C. H. West, Chief Engineer

The testimony of this witness here shows that between 1882 and 1885 the levees were first built near the head of lower Tullos Island and later near its lower end, showing caving along the chute or near the head of the island, extending down in front of the main Mississippi bank about Chotard. The caving apparently stopped in this vicinity for several years, but by 1888 had begun above and behind to the North and East of upper Tullos Island, where a levee and run-around were built in 1888 and 1889. In 1890 another levee was built from the 1889 levee down to the head of the 1883 levee. This was followed in 1892 by a new levee from the lower part of the '90 levee to the levee at Chotard. This shows that from 1888 to 1892 a complete new levee was built around Albemarle Bend to the North and East of Tullos Island. R. p. 180, 181.

The testimony of this witness shows conclusively that Island 98 did not wash away but that because of some radical change in the river, its course was changed so as to cut around the North and East of Tullos Island to make a new channel in the enlarged chute.

FROM 1894 TO 1913

With reference to the conditions occurring subsequent to the year 1894, up to 1913, the testimony is undisputed that the Mississippi River rapidly caved into the Mississippi shore, adding to the Island or towhead by accretion, until it had built considerably East and North of the original Eastern boundary of Tullos Island. Since the evidence in this regard is not disputed, the testimony of the following witnesses will be discussed only briefly in this regard, but more fully with reference to their knowledge of the physical facts and conditions existing on the towhead or Island during this period of time.

Captain George Prince: Is a steamboat captain familiar with the territory in question since 1897. At the time of his earliest recollection the channel was between Newman's Towhead and the Mississippi shore with no island in the river. The towhead continued to grow by accretion towards the Mississippi shore. R. p. 25. The river broke through

the towhead in 1912, and the old channel filled up about 1916. R. p. 27 and 28. The largest timber on the towhead is in the Southeastern part, just West of Chotard. R. p. 38.

Ernest Newman: Born on Willow Point Plantation in 1888. Remembers the territory since 1897. At that time, the bar extended out towards Mississippi about three and one-half miles and continued to grow until the cut-off of 1912, '13. R. p. 52. Is familiar with the depression where the channel later came through. R. p. 63.

N. B. Captain Marshall shows this depression to be the old filled-up 1882 channel.

George R. Newman: Born on Willow Point Plantation in 1886. Remembers the territory in question since 1893. R. p. 66. There was a narrow depression between the mainland and towhead covered with sand. R. p. 68. The towhead continued to grow until the cutoff in 1912.

C. F. Hume: 64 years of age. Lived near Chotard from 1896 to 1907. Was thoroughly familiar with Tullos Island during this period of time, visiting it many times. R. p. 191. At that time, the Island was connected to the Louisiana shore by the old filled up 1882 channel. This old channel was interspersed with little lakes and was navigable in high water, the island during high water being cut off from the Louisiana shore, and boats going through the cut-off in the channel. R. p. 192.

Cottonwood and willows grew on the Island, being 40 or 50 years old and three feet in diameter in 1896. At the place where these big trees grew the land was 25 or 30 feet higher than along the old river bed of 1882. R. p. 193, 194.

In 1912 the river cut back across in its old 1882 channel. R. p. 194.

T. B. Beard: Familiar with the territory since 1876. The bar was then extended about one and a half miles from Louisiana and continued to grow until the cut-off of 1912.

Captain W. H. Reed: Steamboat man familiar with the territory since 1894. At that time a sandbar extended

about a mile from Willow Point. The towhead on this bar became prominent about 1900. There was another towhead inside the timber line. R. p. 104. Between the towhead and the old timber line there was a depression of white sand, navigated by small boats in high water. The cut-off came through here in 1912. R. p. 107.

N. B. Captain Marshall's testimony shows this to be the old filled-up 1882 river channel.

The witness is familiar with the place on the towhead where there is a marked bank ten or twelve feet high with cottonwoods growing on the top of it, and extending westward to the river. The soil in front of the bank is a new deposit with willows growing on it. R. p. 124, 125.

N. B. Defendant's witness, Albrittian, shows this high ground to be between the old 1823 chute line and the present river channel, and in the same location as Island 98.

Toward the head of the bar there is an old field grown up in bermuda grass. R. p. 125.

N. B. Chart 45, Survey of 1882, shows the North part of Island 98 to be cultivated land. This also accords with the testimony of Miller, R. p. 220.

WHAT THE EXHIBITS SHOW

Defendant's exhibits A-N, R. pp. 162-168 (not printed), were placed in evidence for the purpose of showing that from the time of the earliest governmental surveys, the State of Mississippi had exercised acts of dominion over and claimed as its own the property here in question. The State of Louisiana neither exercised, nor attempted to exercise in any way, dominion or control over such property at any time between the date of the earliest survey and the present time.

Defendant's Exhibit "A" is a certified copy of the land assessment rolls of Issaquena County, Mississippi, covering assessment of the lands here in controversy from the year 1848 to the year 1926. During this entire period of time, these lands were assessed by Issaquena County for taxation and appeared on its tax assessment rolls. The assessments

show that the property, and especially Island 98 or Tullos Island, during the period of time in which the State of Louisiana claims the island to have been completely washed away, that is, between the years 1882 and 1894, was continuously assessed on the tax rolls of that county. These assessments also show by the varying number of acres assessed that the ravages of the river on the island were considered.

During these years, the assessment rolls assessed that part of the original Tullos Island then in existence. During this period of time, a part of sections 20, 21, 28 and 29 were assessed. The assessment roll shows that during this time these lands, in fact, were an island and on the rolls in a number of cases, after the sectional description of the lands appears the word "island." The number of acres comprising the territory assessed varied from year to year, as new assessments were made. At no time during this period do the assessment rolls leave off all of the territory originally surveyed as Tullos Island.

Defendant's Exhibit "B" is a certified copy of the record of lands sold to the State of Mississippi for delinquent taxes in Issaquena County, covering the territory here in question. This exhibit shows that in the years 1869, 1879, 1880, 1881, 1888, 1890, 1891, 1895, 1897, 1898, 1900, 1901, 1902, 1906, 1907, 1912, 1915, 1922, 1923, 1924 and 1925 part of the lands here in controversy were sold by the State of Mississippi for delinquent taxes.

Defendant's Exhibits, "G," "H" and "I" are certified copies of the assessment roll of East Carroll Parish, Louisiana, showing assessment of Willow Point plantation for the year 1876 to 1926. These assessments show that the State of Louisiana during this period of time assessed for taxation no part of the land here in controversy, either as lands originally surveyed, or as lands attached by accretion to the original survey of the township in which Willow Point was located. These exhibits show that in 1876 Willow Point was assessed for taxation with the number of acres as 719. That in 1880 the assessment was reduced to 640 acres, and in 1882 to 563 acres. That in 1886 the assess-

ment was reduced to 375 acres, in 1889 to 259 acres, in 1906 to 150 acres, in 1907 to 50 acres, and in 1912 was assessed as 160 acres, which is the present assessment.

Defendant's Exhibit "J" is a certified copy of a deed from Mrs. Annie E. Newman to Walter A. Newman dated the 26th day of October, 1882, being a deed conveying a portion of Willow Point plantation. This deed contains the following provision:

> "It being well understood by vendor and vendee that by reason of the caving of the banks of the river, the said Willow Point plantation, according to recent surveys has been reduced in quantity to 600 acres."

Defendant's Exhibits "K" and "M" are tax deeds executed by the sheriff and tax collector of East Carroll Parish, Louisiana, selling a part of Willow Point plantation for the non-payment of taxes for the years 1893 and 1907.

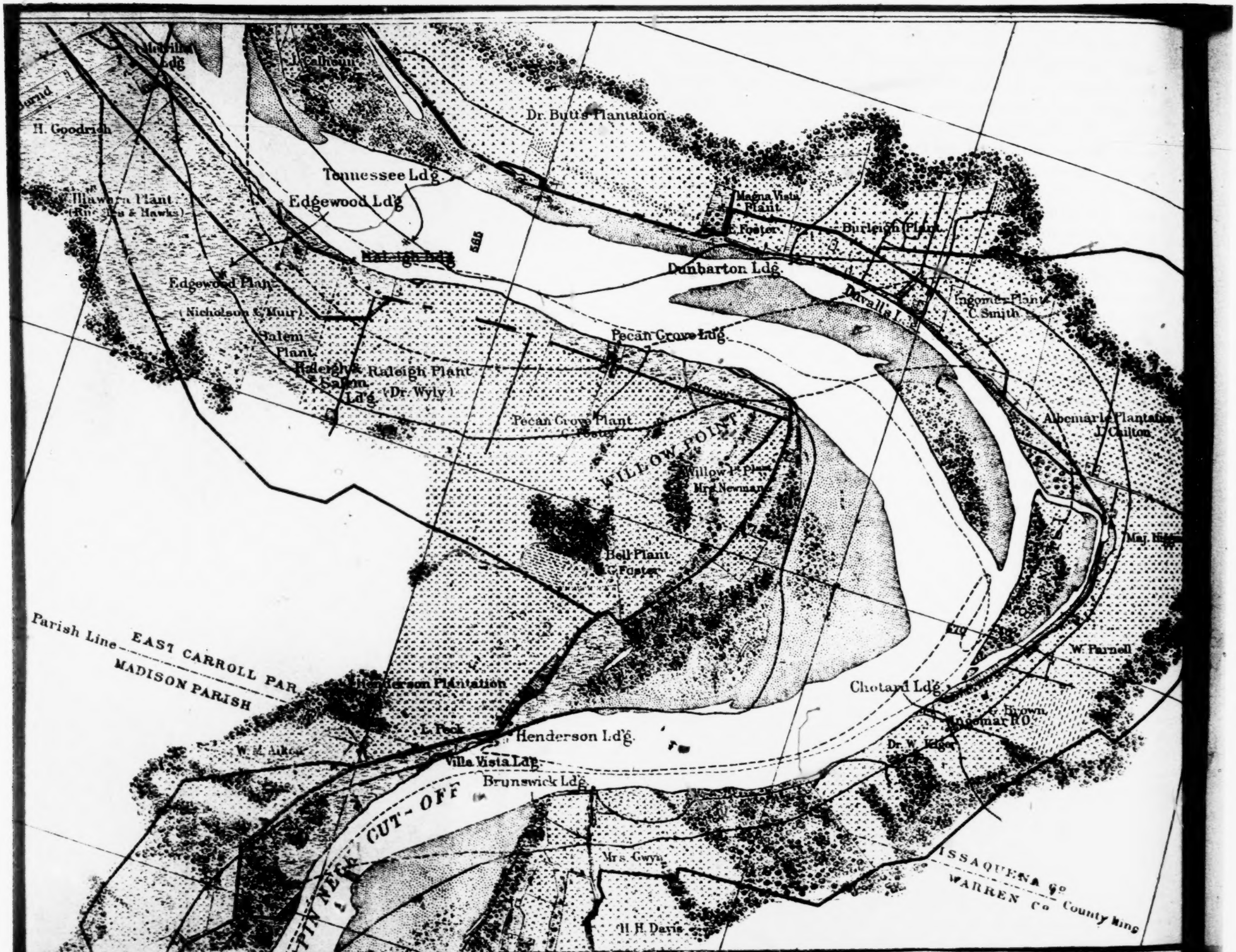
Defendant's Exhibit "L" is a certified copy of a deed from J. S. Milliken to J. A. Craig conveying part of Willow Point plantation.

Defendant's Exhibit "N" is a certified copy of power of attorney and deed from George R. Newman, et al, to Rufus H. and Andrew B. Learned, conveying a part of Willow Point plantation.

These deeds were introduced in evidence for the purpose of showing that neither the State of Louisiana, nor the owners of Willow Point, at any time until the filing of this suit, claimed any part of the lands which are here in controversy.

Exhibits 1 and 2 (R. p. 170-171) are United States Land Office township maps with Mississippi river banks in Louisiana, (1824) and in Mississippi (1823) sketched.

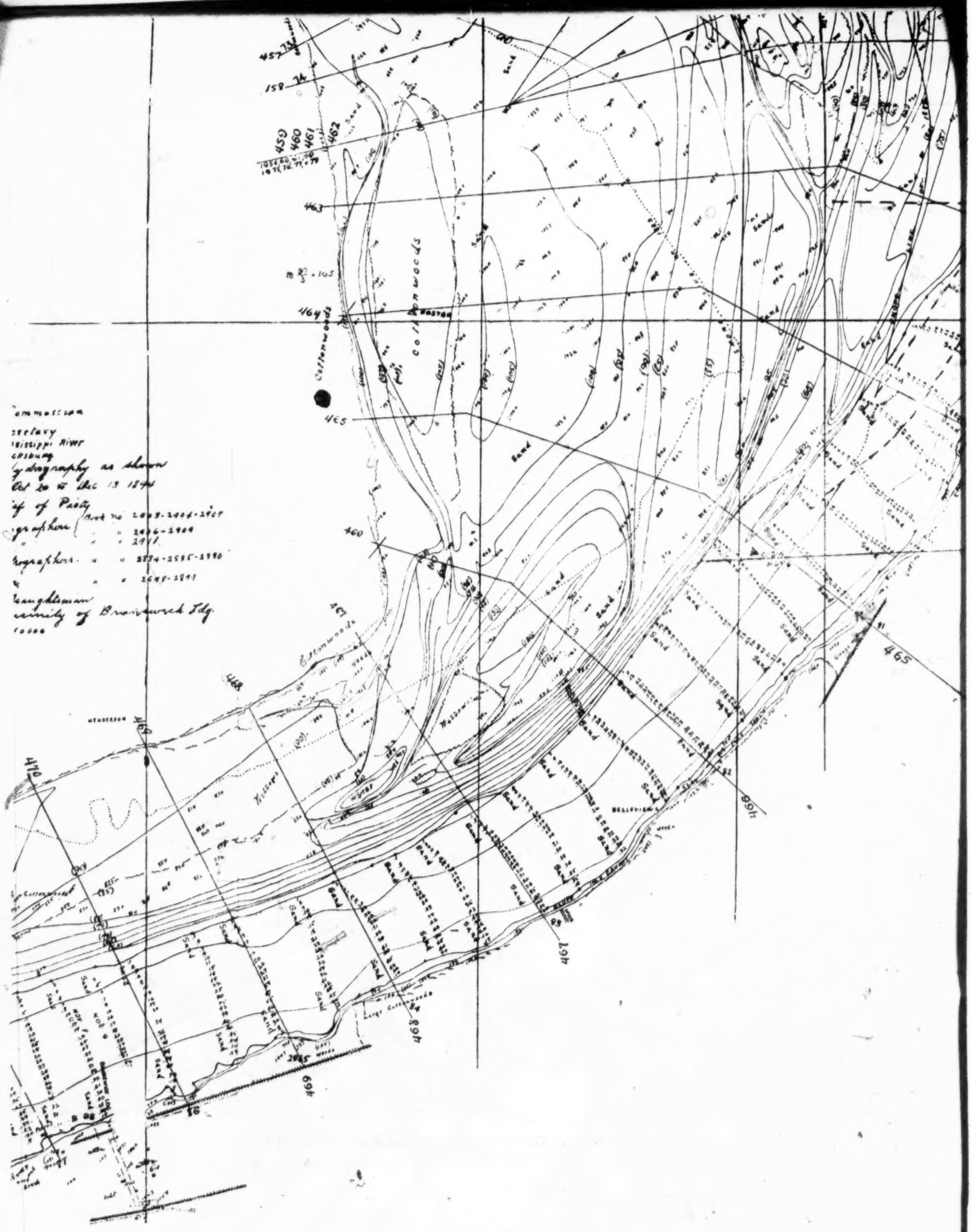
Exhibit 3 (R. p. 171), Complainant's Exhibit "C," Mississippi River Commission Sheet 17, merely is a small scale 1 inch equal one mile, map for non-technical use, made by reduction from the Charts 45 and 46, Survey 1882, scale 1:20000, which are a little more than three times larger than the small scale sheet. Sheet 17 shows the general outline of the river from mile 562 to 595; that is the shore line of main banks and the bars. Also the general features of the land such as the names of owners, timbered or cultivated; location of levees, property lines, parish lines, landings, names of river bends and large lakes, but no details, Government Sights, reference points, contours, elevations or soundings. Willow Point is shown in Louisiana about mile 567 and Chotard Landing in Mississippi about mile 571, with Tullos Island divided into two parts, the lower marked Island No. 98, lying on the Mississippi side between the Point and the Landing. Lack of exactness in detail is evidenced by the difference in the bar line opposite Chotard, as shown on Sheet 17 and on Chart 46, Exhibit 6 C. The indentations of the bar lines shown on the larger scale chart 46, do not appear on Sheet 17, though the small scaled map was made from the larger ones and published in 1883, one year after the large 1882 maps issued.



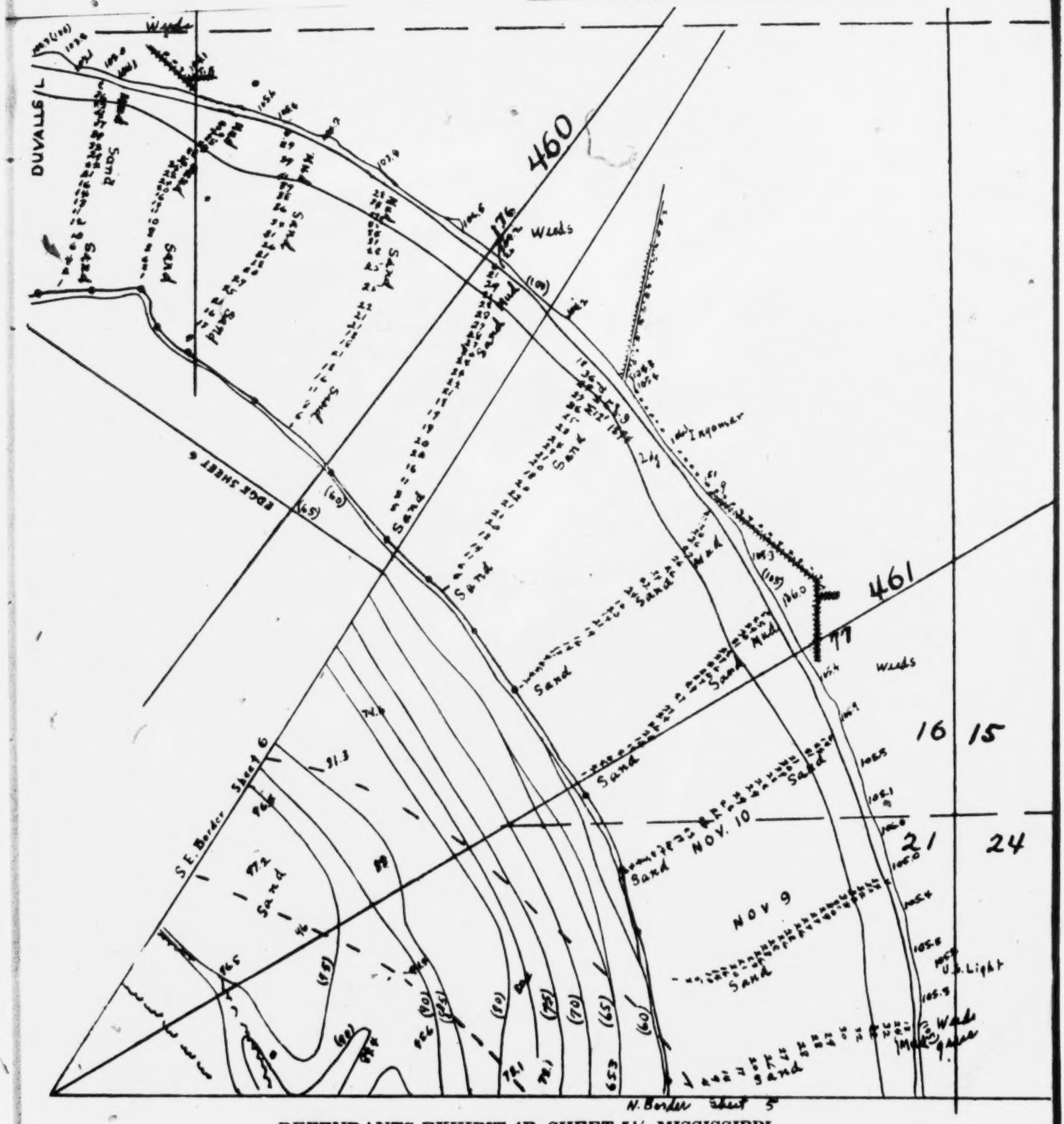
COMPLAINANT'S EXHIBIT "C" SHEET 17 OF MISSISSIPPI RIVER COMMISSION SURVEY OF 1882. EDITION OF 1900.

Exhibit 4-A-B-C (R. p. 171-176) are three blue prints of Field Sheets (5, 5½, 6) of Mississippi River Commission Survey of 1894, scale 1:10,000, certified by the Secretary of War as correct and official maps. They are sun prints from the original maps, projected, (platted from the record notes) by survey in the vicinity of Tullos Island, with the shore line of 1882 indicated by solid and dotted lines where written on the sheets. These shore lines of 1882 are the only things that concern or have any reference to the 1882 Survey which appear on the Field Sheets—they were merely drawn on the Field Sheets at the same location as they appear on the 1882 Chart or more probably on the 1882 Field Sheets. The map-making procedure in the Mississippi River Commission Office was explained by Capt. C. H. West, member of the Commission, but only since 1910, which may sufficiently account for the happy or unhappy disregard he gave to the distinction between the several names by which the Commission maps are designated. (R. p. 148.) As he said, the large working sheets are first made; that is, they are the original maps. These sheets 4-A-B-C, are the same as the working sheets to which he referred. They show everything that is taken by the survey. They are designated Field Sheets and are NOT PRINTED BUT CAN BE OBTAINED FROM THE SECRETARY OF THE COMMISSION as these exhibits 4-A-B-C were. These sheets show that not only was the shore and bar line included in the survey but all the river and land between the top banks and in some instances beyond the top banks, as levees, roads, etc. Soundings were taken in the river, elevations all over the land, by which contour lines were drawn, a topographical survey was made as shown on the sheets, even names of engineers engaged and date employed being stated in the label on each sheet. The sheets show clearly the old river bed between Willow Point and Tullos Island filled to practically a level; elevations at intervals across from Louisiana side to Island are at upper end, 86-4, 86, 89, 85, 86, 90. The 90 is 20 feet lower than the 110 on top of the Island. (R. p. 170). The 110 on top of the Island is 50 feet higher than the water edge, 60. At the lower end of the Island, a mile lower down in

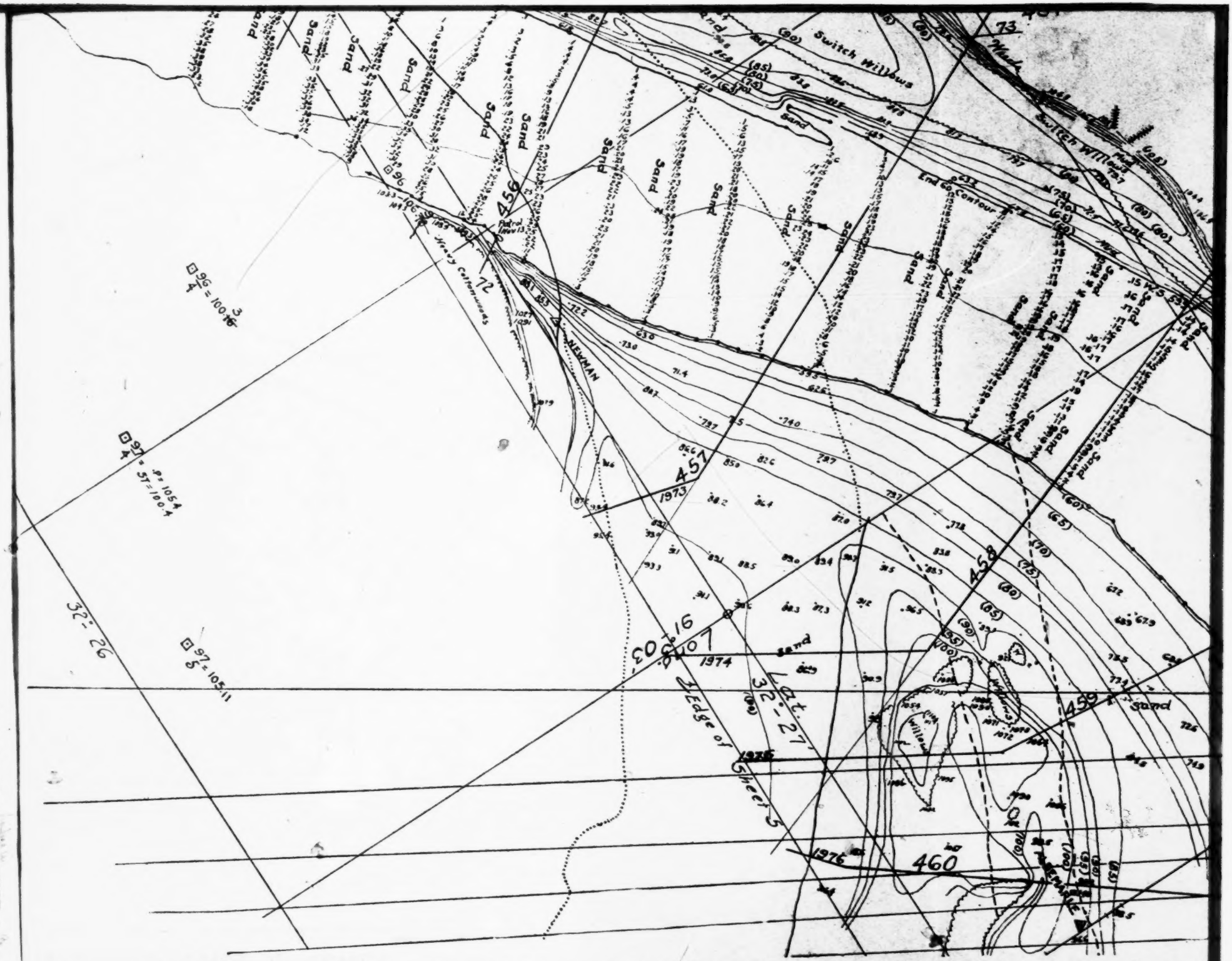
the old bed the elevations run 81, 85, 82, 84 and 89. The elevation on top of the island being higher by 5 to 10 feet in places than it was in 1882, as shown by that survey, while in other localities the elevation halfway down the Island is 100, the same as it was in 1882. Width of the old bed and the location is practically, within a hundred feet or so, the same as the channel in 1882. The lines of latitude and longitude (the lines on the blue print are faint, as are the figures, but are discernible) 32°37′ and 91° .03′, intersect near the middle of the old bed as in the river in 1882. The shore line and bar lines of 1882 appearing on these blue prints were merely drawn on—transferred from the 1882 survey Field Sheets to show where the river bed was at that date and are utterly without significance except to show very slight wearing away on the Island side and accretion on the Louisiana bar side between 1882 and 1894—which was all the change due to caving between Willow Point and Tullos Island.



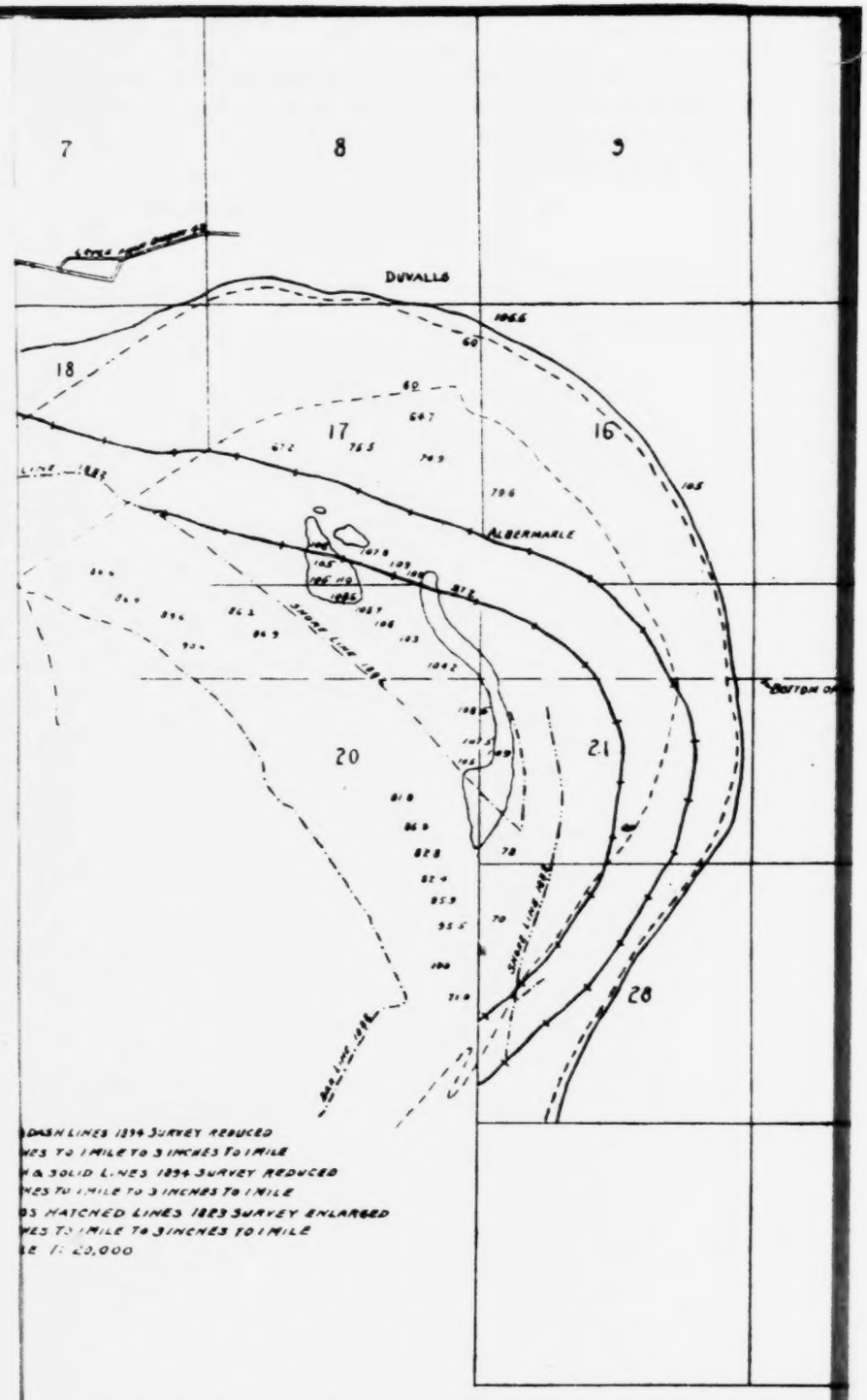
DEFENDANTS EXHIBIT 4A, SHEET NO. 5, MISSISSIPPI RIVER SURVEY OF 1894.



DEFENDANTS EXHIBIT 4B, SHEET 5½ MISSISSIPPI RIVER COMMISSION SURVEY OF 1894.



DEFENDANTS EXHIBIT 4C, SHEET NO. 6. MISSIS SIPPI RIVER COMMISSION SURVEY OF 1894.



DEFENDANTS EXHIBIT 4D, TRACING REDUCED FROM EXHIBITS 4ABC.

These blue print field sheets of the 1894 survey are correlated and joined on one sheet by Capt. Marshall's tracings, Exhibits 4D and 4E. Exhibit 4D is drawn on the same scale as the original field sheets, while Exhibit 4E is reduced to half the size.

Exhibit 4E (R. p. 176), which is changed only in size of scale to coincide with the scale of the Mississippi River Commission Charts, shows the Mississippi River was east of the Island in 1894, with the Island there in the 1882 position. A part only washed away where river went around the upper end and at lower end along the old bank of the chute between the Island and the main Mississippi shore. The north part of lower Tullos Island in Sec. 21, which was cultivated in 1882 and upper Tullos Island in Sec. 20, had extended by accretion northeasterly as the river widened by caving the main Mississippi shore. The lower end of Section 21, on which timber grew, had caved away as the chute widened out to a narrow river width, thereby washing away the lower end of Tullos Island with only slight cutting on the main Mississippi shore in that locality.

Complainant's Exhibit "C" being Mississippi River Commission Sheet 17, of 1882 Survey, with 1894 shore and bar lines printed in red thereon, is not incompatible with the survey as shown on Field Sheets Exhibit 4-A-B-C. In fact, without alteration, Sheet 17 shows exactly the same parts of Tullos Island west of the west shore line of the Mississippi River as shown on Exhibit 4-A-B-C. This is of course true since the red lines printed on Sheet 17 were taken from the Field Sheets 4 A-B-C of the 1894 Survey. Also since the latter sheets show the Island in the same position as in 1882, no change could have been made in Sheet 17 in that regard. In addition, the note printed on Sheet 17 reads:

> "The surveys of 1882 are shown in black.
>
> "The shore line surveys of 1894 are shown by the light lines in red, full lines representing banks and broken lines representing bars."

This is conclusive that as to the 1894 *survey* nothing is *shown* on Sheet 17 except the bank and bar lines in red, but that does not state nor imply that *everything* of the 1894 survey is shown, for Field Sheets 5, 5½ and 6, Exhibit 4 A-B-C clearly show what of the 1894 Survey was left off of Sheet 17. None of the topography taken in 1894 and shown

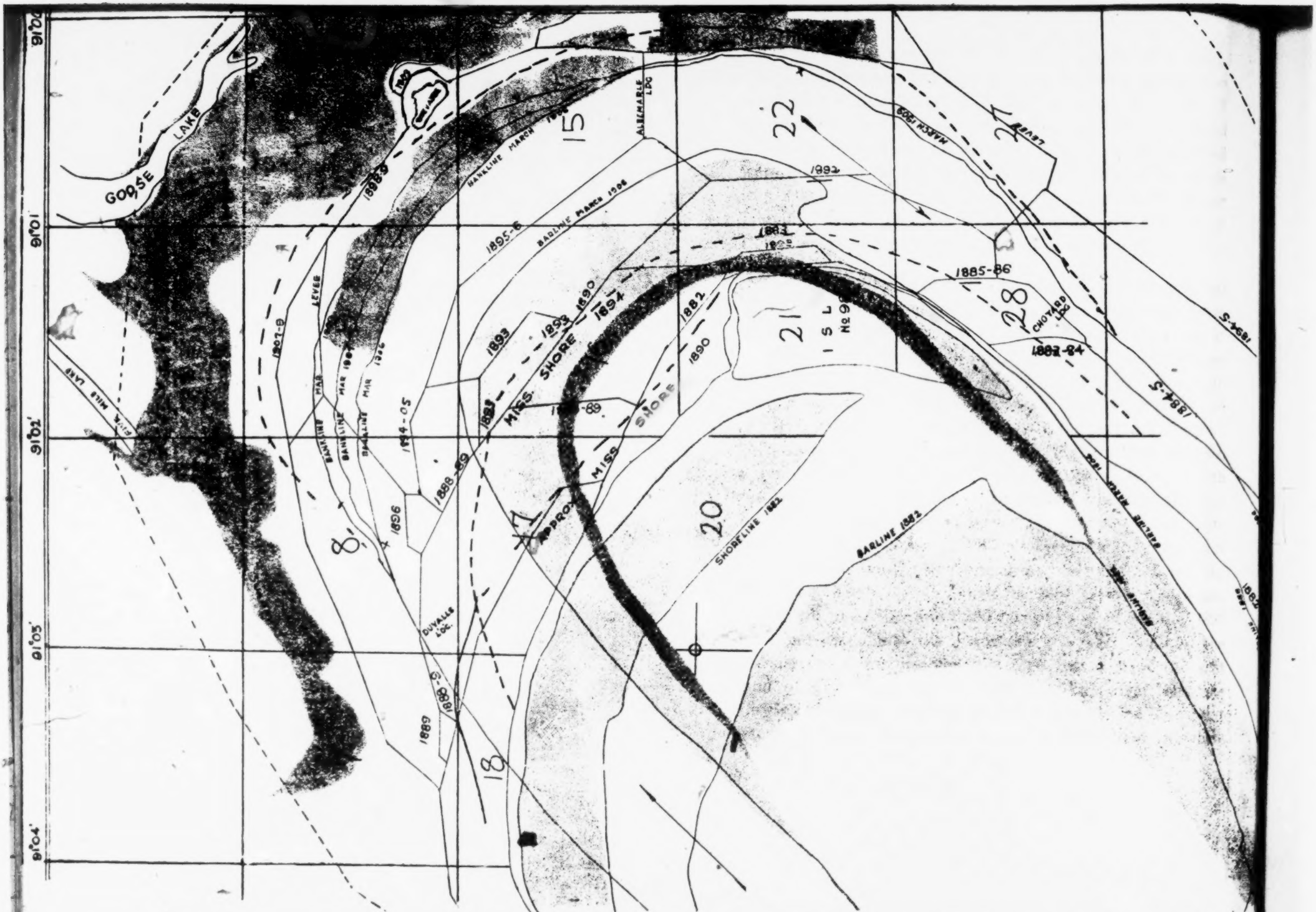
on Field Sheets 5, 5½, and 6 is shown on Sheet 17; no elevations, no contours, no soundings.

Exhibit 5 (R. p. 179-80) Blue print of Mississippi River District Map of Albemarle Bend, L. B. 567-752, April 5, 1906, with the name of C. H. West, Chief Engineer, scale of 1:20000, shows the river, the banks and two islands the same as shown on Mississippi River Commision Charts 45 and 46 of 1882 Survey. In addition, it shows the location of the levees, with the date of building between 1882 and 1906, due to caving banks in Albemarle Bend. Between 1882 and 1885, levees were built first near the head of lower Tullos Island and later near the foot of that Island at Chotard opposite the point of greatest extension of the Louisiana bar in front of Section 7. This shows caving along the chute from near the head of the Island down and it also shows the main Mississippi bank was caving at the foot of the Island and indicates that the lower end of Lower Tullos Island in Section 21 washed away.

This blue print shows the caving stopped near Chotard for several years after 1885 and by 1888 had begun above and behind, east of upper Tullos Island in the vicinity of Duvall's Landing in Sections 7, 8, 16, 17, 18 on the main Mississippi shore, where a levee was built in 1888-89, 13,500 feet or 2¼ miles in length, down to Albemarle Landing. A small run-around, built in 1889, extending to the upper end of the 1888-89 levee, up stream shows caving moved up the river further than expected, but no more levee was built above that.

Testimony of Capt. H. M. Marshall states (R. p. 175), "The mail boat landed at Albemarle Landing against the levee during high water of 1890," showing the width of the chute from the levee over to the upper Tullos Island which was there then. (Both upper and lower Tullos Island were there and the blue print shows the width of the chute was 2,000 feet from the levee to the trees on the upper Island. That is half the width of the river from Willow Point across to upper Tullos Island in Section 20.)

The close approach of the widened chute to the lower en of the 1888-9 levee compelled the building, after high wate of 1890, of an extension levee from the rear lower angle o the 1888-9 levee down the chute 3,500 feet to the 1883 leve at the head of lower Tullos Island. This was followed 1892, by building a new levee from the rear lower corner the 1890 levee down over two miles to the levee at Chotar This shows that including 1888-9 and 1892 working season a complete new levee was built around Albemarle Bend wi the levee above Albemarle set back 3,000 feet from the ea bank of the chute and set back 2,000 feet from the chu bank below Albemarle. In 1893 a loop a mile long was bu to cover threatened levee breach at the junction of t 88-9 and 1890 levees. When the 1894 survey was ma nearly all of 1888-9 and 1890 levees covered by the loop had caved into the river, and the main bank of Mississippi shore in 1894 was 6,800 feet east of the bank of Mississippi River in 1882 where the river th flowing along the west side of Tullos Island. The blue p shows the main Mississippi shore in 1906 when this



"DEFENDANTS EXHIBIT 5, MISSISSIPPI LEVEE DISTRICT MAP OF ALBEMARLE BEND SHOWING CHANNEL FROM 1882 TO 1906
C. H. West, Chief Engineer

print tracing was made by Captain West, was 4,000 feet east of the Mississippi shore in 1894. Other levees are shown that were built after 1893 and shore lines also as the river moved east-north-east.

Exhibits 6 A-B-C-D (R .p. 182) are certified copies of Mississippi River Commission printed maps: 6-A is Sheet 17, scale 1 inch equal 1 mile of 1882 survey, published in 1883, which is the same as complainant's Exhibit "C" and "D" without the red surcharge lines. 6B and 6C are Charts 45 and 46, scale 1:20000, 1882 Survey. 6D is Chart 47, scale 1:20000, 1913-15 Survey.

Exhibit 6 A, Sheet 17, as heretofore stated, really amounts to merely an accurate sketch to be used as reference map by steamboat men, travelers and others, having only superficial interest in the river.

Exhibits 6 B, 6 C and 6 D, are Charts, giving exact data of location, Government Sights, elevations, reference bench marks, depths of the river and information as to surface topography, timber and other growths, with houses, roads and levee improvements shown.

On these charts, red keel lines were drawn, showing the United States land sections as they appear on the township maps in so far as the sections had not caved into the river. The position of the section line was fixed or identified by the points at which they cross the levee.

Exhibit 6 E is a letter from the Assistant Engineer of the Mississippi Levee District fixing the section line crossings on the levee by Station Numbers which appear on the Mississippi Levee District Map, a duplicate of Chart 47.

Captain West located the section lines on the maps (R. p. 135) he made from the county and parish division lines shown on the Mississippi River Commission Charts, measuring from there up the lengths of the sections according to the township plats. The discrepancy arising from the inaccuracy of the township surveys measured by chains and the Mississippi River Commission's exact measurements by triangulation in going the few miles north to the sections involved in this case is not material and the maps

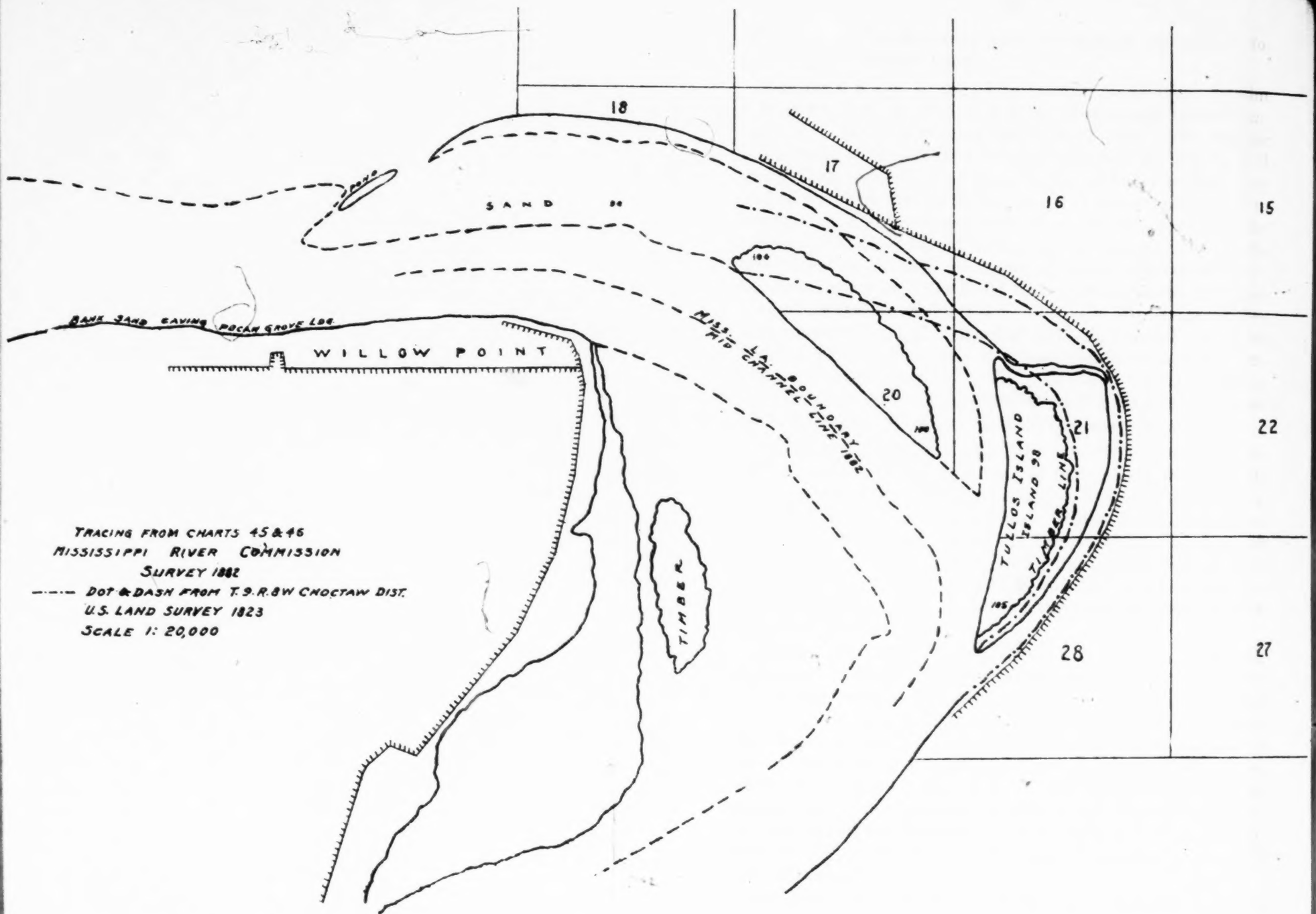
offered by Complainants and Defendants agree—fit to gether, as to section lines.

Exhibit 6 F (R. p. 182) is a tracing made from Exhibi 6 B and 6 C, Charts 45 and 46, of Mississippi River Com mission 1:20000 Survey of 1882 (R. p. 183). The tracin is identical with that part of Charts 45 and 46, Exhibit 6 and 6 C, as to location of river banks, red keel section line and features shown on the tracing. It was made simply t combine on a single sheet what is on the two charts in th vicinity of Tullos Island and to permit comparison of t river location in 1882 as shown on those Charts with th location shown on 1894 Field Sheets, reduced to the sam scale, 1:20,000 on Exhibit 4 E and with Mississippi Rive Commission Chart 47, Survey of 1913-15, Exhibit 6 A. Als Exhibit 6 F and Exhibit 4 E permit comparison with Co plainant's Exhibits "G," "H," "I," and "J" by placi the tracings on top of the Complainant's maps of the sam scale, with corresponding sections one over the other.

Exhibits 6 B, 6 C, 6 E show the condition of the river i 1882 as set out in the statement of facts above which need no repetition here. It may be added, however, the Missi sippi-Louisiana boundary between Willow Point and Tulle Island in 1882 is marked on the Charts 45 and 46, Exhibi 6-B, 6-C, and on the tracing 6-F; the intersection of lati tude 32° 27′ and longitude 91°.03′ printed on Chart 45, Ex hibit 6-B, being in the middle of the river between Willo Point and Tullos Island.

Exhibit 6-D is Mississippi River Commission Chart 4 Survey of 1913-15. It shows the condition of the river aft it had returned to the 1882 channel, which was the fill up bed shown in Exhibit 4 A-B-C of 1894. Willow Poin and the upper end of Tullos Island in Section 20 had cave off at the time of the 1913-15 Survey, whether before o after the return of the river to the 1882 channel is no known and is not material to this case. The downstrean movement left the intersection of latitude 32° 27′ and long tude 91° .03′, in the river at the point of division of the 188 and 1894 channels.

Exhibits 7-A, 7-B (R. p. 183-184) and Exhibits 3 and



DEFENDANTS EXHIBIT 6F, TRACING FROM CHARTS 45 AND 46, MISSISSIPPI RIVER COMMISSION SURVEY OF 1882 AND U. S. LAND SURVEY OF 1823.

blue prints and tracings from which they were made, offered as Exhibits "J" and "H" by Complainant were brought in by Defendant to make it clear that all the maps offered in the case coincide, except Complainant's Exhibit "I" made from Sheet 17, with 1894 bank and bar lines in red, which does not agree with Defendant's Exhibit 4 A-B-C Field Sheets 5, 5½, 6, of the Survey made by the Mississippi River Commission in 1894, nor the tracings Exhibits 4 D-4-E, because Exhibit "I" does not correctly show the conditions of the river and land in the vicinity of Tullos Island in 1894 or at any other time.

ARGUMENT

There is little difference between complainant and defendant in their conceptions of the law of accretion and avulsion. As applied to this case, counsel are agreed on the proposition that where a navigable river is the boundary line between states, and the channel of navigation is changed by nature, or gradual processes know as erosion and accretion, the boundary follows the varying course of the stream, but that where an avulsion occurs in such stream, the resulting change in the channel does not change the boundary, but that it remains in the middle of the old channel as it existed prior to the avulsion.

Nebraska vs. Iowa, 143 U. S., 539, 36 L. ed. 186,
Missouri vs. Nebraska, 196 U. S. 23, 49 L. ed. 372,
Arkansas vs. Tennessee, 246 U. S. 158, 62 L. ed. 638,
Oklahoma vs. Texas, 260 U. S. 606, 67 L. ed. 428.

These propositions will be, therefore, in this brief referred to as settled law. There are other legal propositions, however, which counsel for defendant conceive to be material to the determination of this cause, and these propositions will be discussed in their relation to the testimony in the case, treating such testimony as nearly as possible in chronological order.

I

1823-1882

The burden of proof in this case is upon the complainant.

The fact that there is involved a disputed boundary line between two states does not change the general rule of law in this respect; the same rule being followed as is applicable in the determination of boundary suits between private individuals.

> Rhode Island vs. Massachusetts, 12 Peters, 734, 9 L. ed. 1233.

Nor does the fact that the boundary here in dispute is found in running water vary the general rule in this regard, it being well established that in cases of this character the same rules of law with reference to accretion and avulsion are recognized as in cases between individuals.

> City of New Orleans vs. United States, 10 Peters, 662, 9 L. ed. 573,
> Nebraska vs. Iowa, 143 U. S. 593, 36 L. ed. 186,
> Missouri vs. Nebraska, 196 U. S. 23, 49 L. ed. 372,
> Arkansas vs. Tennessee, 243 U. S. 158, 62 L. ed. 683.

The rule is also settled that there is a presumption in favor of the permanency of boundary lines, and where a party asserts material changes in the course of a boundary river such as will affect the boundary line, the burden is upon him to prove such changes.

> State of Tennessee vs. Muncie Pulp Company, 119 Tenn. 47, 104 S. W. 437,
>
> Oklahoma vs. Texas, 260 U. S. 606, 67 L. ed. 428.

Counsel for complainant in their brief apparently admit the foregoing to be a correct statement of the law, their brief at page 120 containing the following:

> "While the burden of proof to show the changes in the original boundary is on the one alleging the change complainant has fully discharged such burden."

It is elementary law that before riparian rights can attach to land, the land itself must be contiguous to the water, actual contact therewith being necessary.

> Farnham on Water and Water Courses, Vol. 1, p. 304,
> Kinney on Irrigation and Water Rights, Vol. 1, pp. 760 and 761,

Saulet vs. Shepherd, 4 Wallace 502, 18 L. ed. 446,

Posey vs. James, 75 Tenn. (7 Lea) 98,

Fulton vs. Frandoley, 63 Tex. 330,

Nugent vs. Mallory, 145 Ky. 824, 141 S. W. 850,

Wilson vs. Watson, 144 Ky. 352, 138 S. W. 283, Ann. Cas. 1913-A, 774.

Where a party claims lands as accretions, the burden, therefore, is not only upon him to establish the fact that the lands were, in fact, formed by accretion, but he also has the burden of proving that such accretions attached to lands which belonged to him and were contiguous to the water.

Green vs. Witten, 200 Ky. 725, 255 S. W. 519,

Tillotson vs. Fulp, 172 N. C. 499, 90 S. E. 500,

Mann vs. Archbell, 186 N. C. 72, 118 S. E. 911,

Ball vs. McDuffy, (Tex. Civ. App. May, 1919) 212 S. W. 844,

Producers Oil Company vs. State, (Tex. Civ. App. May, 1919) 213 S. W. 349,

Land vs. Dunn, (Tex. Civ. App. Nov. 1920), 226 S. W. 801,

Lennox vs. Isbell (Tex. Civ. App. Dec. 1922), 245 S. W. 728,

Petty vs. Oil Company, (Tex. Civ. App. Oct., 1923), 254 S. W. 565.

From the foregoing authorities, it is evident that before the State of Louisiana could establish its case it is not only necessary that it overcome the presumption that boundary lines once established are permanent, but it also must meet the burden of proof and establish by a preponderance of the evidence, the following facts:

1. That accretions were added to territory on the westward side of the Mississippi River.

2. That these accretions were added to Louisiana territory, or, in other words, that Louisiana territory at the time the accretions were formed, was contiguous to the water.

The defendant, State of Mississippi, contends that the

complainant has failed to meet the burden imposed upon it in each of the two foregoing particulars. As has been stated in the foregoing pages of this brief, testimony of complainant's witness, Charles H. West, shows that between the years 1824, when the first survey of the Louisiana territory at the point in question was made, and the making of the map of the Mississippi River Commission in 1882, the river had moved its channel eastward about a mile and one half. The presumption being that boundary lines once established are permanent, it was incumbent upon the State of Louisiana to prove by a preponderance of the evidence that this change in the channel of the river between these years was the result of accretion rather than of avulsion If the change was the result of accretion, then the boundary followed the river, while if the change was caused by avulsion, the boundary remained fixed as it was prior thereto. In order to meet the burden imposed upon it in this respect and to prove that the river moved its channel gradually and to the eastward from its 1824 to its 1882 location by accretion, the complainant introduced only one witness, Charles H. West. The testimony of this witness is discussed in the preceding pages of the brief, and for that reason will only be touched lightly at this point. The witness does not testify from personal knowledge, but only from the maps introduced in evidence as exhibits to his testimony, they being the 1824 governmental township plat of the Louisiana territory at the point in question; (Complainant's Exhibit A); a blue print prepared by himself purporting to show the Louisiana shore line in 1866 (Complainant's Exhibit "G"); a map of Hopkins Island, an island in the river in the vicinity of the territory in question (Complainant's exhibit "BB"); and Mississippi River Commission Chart Number 45, Survey of 1882 (Complainant's Exhibit "M"). The purported map of 1866, R. p. 147, was not introduced in evidence, and the blue print based on such was not admissible in evidence, because not founded upon any facts disclosed by the record, and being in effect hearsay evidence. The 1870 map of Hopkins Island, R. p. 148, did not purport to be a map of the shore line of the river but only of the island itself. With these

maps furnishing the basis of his opinion, the witness testified that the Mississippi River gradually moved to the eastward by erosion of the Mississippi shore, and the Louisiana shore line progressively followed it, building by accretion, until it reached its 1882 channel.

This is the only testimony which is offered by the complainant to overcome the presumption that the 1824 boundary line was permanent and to meet the burden imposed upon it of showing how the river moved from its 1824 to its 1882 channel. The weakness of this testimony is evident when it is considered that all of this witness's testimony was opinion evidence, highly speculative and based upon facts of no evidentiary value. Especially does it seem weak and unconvincing when the testimony of other witnesses, both for complainant and defendant, describes the physical conditions and surroundings in this area between the location of the 1823 channel and the 1882 channel.

Complainant's witnesses, George Prince, R. p. 39, George Newman, R. p. 55, 56, 58, 59 and 60, and defendant's witnesses, Lawrence Towns, R. p. 232, 233, and Etna J. Albrittian, R. p. 245, 248 and 251, all testify that they are familiar with a depression in this area on the Louisiana mainland running in the approximate location of the river channel of 1823. This depression is known locally as "St. Francis Chute", and the defendant's witnesses testify that it is known as the old river channel of 1823. The defendant's witness, Albrittian, with a surveyor located this old channel showing it to be in practically the same location as the river channel in 1823. His testimony shows that the bank line of the old channel was clearly discernable on each side for a great part of the way along the chute, R. p. 245, 248, 251, and that in times of high water it was filled from its northern to its southern limits. Chart 45 of the 1882 Survey and Chart 47 of the 1913-1915 Survey both clearly show this old river channel although not designated thereon by name.

The fact that this old river channel is clearly discernable is positive proof of the fact that the river had not changed its location from its 1823 to its 1882 channel by accretion.

It is common knowledge that if this change had been by accretion, both banks of the old channel could not remain, because as the accretion would gradually build to the shore and as the river would gradually move to the eastward, the east bank of the river would necessarily be worn away and destroyed. Where both banks of the old river are shown to still be in existence as is the case here, then there is no conclusion to be reached other than that the river suddenly and violently changed its course so as to leave the old river bed dry and the banks on each side still standing.

The case of Simpson vs. Martin, 174 Ark., 956, 298 S. W. 861, on its facts is practically identical with the case at bar. In that case the court said:

> "It is the contention of the appellant Simpson that the south bank of the river gradually caved and washed away until the bend of the river had entirely disappeared, and that, as this was done, the north bank gradually moved southward by the accretions to that shore, and that the original lands to which appellees had a record title gradually disappeared and became a part of the channel of the river, until finally the accretions to appellant's lands occupied the area which once comprised the land of appellees, together with other lands contiguous thereto and south thereof, all of which appellant Simpson claims as an accretion to his land."
>
> * * * * *
>
> Appellees deny that these lands were an accretion to appellant's land. On the contrary, they assert their land never disappeared through the action of the river, but has remained as original land at all times since the Government survey, which was made in 1826, and, in addition, they say they have title to certain lands also involved in this litigation as an accretion to their own land. They also say that at some time subsequent to 1826, the river changed its course as the result of an avulsion or cut-off, and the court below sustained this contention, and entered a decree accordingly, and, upon this finding of fact, apportioned to appellees and certain other riparian owners the accretions to lands which are south of the river according to the survey

of 1826. The apportionment of this accretion was one of the subjects involved in the cases consolidated with the cases here appealed, but, as the parties to those suits have not appealed, we need not consider this feature of the case.

The appeal of the appellant Simpson does raise the question of the correctness of the court's finding of fact, but the appeal presents no other question than this question of fact, except only the question of law as to the burden of proof concerning the manner in which the river changed its course.

The question for decision may therefore be stated as follows: Did the river leave the bend shown by the survey of 1826 by the process of accretion, or by an avulsion or cut-off?

In a case presenting many issues of fact similar to the present case, the Supreme Court of Tennessee, in the case of State vs. Muncie Pulp Co., 119 Tenn. 47, 104 S. W. 437, held (to quote a syllabus), that 'the presumption is in favor of the permanency of boundary lines, and the burden of proof is on the one averring that the location of the line has been changed by the action of the forces of nature.' See also 9 C. J. 271, and Bissell V. Fletcher, 27 Neb. 582, 43 N. W. 350.

Inasmuch as appellees are in possession of land shown to be land by the original Government survey, the patents from the United States to the State of Arkansas, and from the State to appellees' predecessors in title, we think the burden was upon appellant to show that the land described as such disappeared and later formed as an accretion to his own land, and this would be true whether he was the plaintiff or the defendant in an action in which that question arose."

In the case of Baumhart vs. McClure, 21 Ohio, App. 491, 153 N. E. 211, title to a certain lot bordering on Lake Erie was involved. This lot was surveyed in 1837 and appeared on the tax rolls from 1837 to 1853, from which time until shortly before the filing of the suit, it was under the waters of the lake. When the lot reappeared, the holder of the

title entered upon the same claiming it as his own. The owner of the lot abutting thereto brought suit, claiming that this lot as restored was added to his lot by accretion, and, therefore, is his own. There was no proof in the record showing whether this lot was washed away gradually by erosion or whether it suddenly disappeared as the result of an avulsion. The court in holding that the plaintiff must fail because he had not met the burden of showing how the disappearance of the lot occurred, had the following to say:

> "In view of the fact that the defendant has a connected chain of title to lot 434 by deed of conveyance, the burden of proof rests on the plaintiff to show such a state of facts as would deprive the defendant of that title. As a riparian owner may gain land by accretion or reliction, so he may likewise lose land by the slow process of erosion, and, if the land owned by the defendant, and her predecessors in title, was taken from them by the slow process of erosion, it would ordinarily be forever gone. This, however, would not be the case if lot 434 was washed away by a storm or storms resulting in a sudden avulsion."

The case of Oklahoma vs. Texas, 260 U. S. 606, 67 L. ed. 428, was a suit by Oklahoma against Texas to establish a portion of the boundary line between the two along the Red river. The boundary between these two states is a part of an old one between the territories of the United States and the Spanish Possessions to the southwest, which was defined in the Treaty of 1819 and ratified in 1821. The court construed this boundary to be on the south bank of the Red river as it existed in 1821, subject to application of the doctrines of erosion and accretion and of avulsion to any intervening changes. The State of Oklahoma contended that the channel in 1821 was different from the channel as it exists today, and that it is entitled to territory which is now south of the present banks of the river. There were no maps, surveys or records made of the river showing the situation existing in 1821, nor were there human witnesses to testify relative to the situation at that time. In passing on the question of whether there had been a

change in the channel of the river, by avulsion as contended by Oklahoma, the court said:

> "Common experience suggests that there probably have been changes in this stretch of the Red river since 1821, but they cannot be merely conjectured. The party asserting material changes should carry the burden of proving them, whether they be recent or old. Some changes are shown here and conceded. Others are asserted on one side and denied on the other."

Under the authority of the foregoing cases, the State of Mississippi earnestly contends that the State of Louisiana has failed to prove by a preponderance of the evidence that the Mississippi river changed from its 1823 to its 1882 channel as a result of accretion.

Not only is this proof insufficient to overcome the presumption of the permanency of boundary lines and to prove by a preponderance of the evidence that the boundary shifted as alleged by the complainant, but the proof offered by the defendant with reference to the physical facts and circumstances is so strong and it so thoroughly refutes and contradicts the opinion evidence of the only witness for the complainant as to show practically beyond dispute that this change was a result of avulsion.

If this be true, then the entire case of the State of Louisiana must fail because its base has not been established; there being no proof that accretions ever attached to land which in fact belonged to the State of Louisiana. In other words, the State of Louisiana even though it showed that accretions attached to the western shore subsequent to the year 1882, yet has failed to prove that they attached to land belonging to Louisiana and contiguous to the river.

II.

1882-1913

All of the testimony offered by complainant with reference to accretions attaching to the west shore of the river, is given regarding conditions existing subsequent to the year 1882. The contention of complainant and its entire case in this regard is based on the assumption that Tullos

Island completely washed away, and that the Mississippi river moved eastward over the site of the island; adding by accretion to Willow Point in the State of Louisiana; that later the river made a cut-off across the accretion leaving a new island—Newman Towhead, in Louisiana. If the complainant has established these facts, then under the rule laid down by this court in the cases of Iowa vs. Nebraska and Arkansas vs. Tennessee, supra, the territory in question belongs to Louisiana, provided the complainant has first established its contention dicussed in subdivision I of this argument.

The contention of the defendant is that Tullos Island did not wash away, but that the channel around the island changed from the west side to the east side thereof, the old channel filling up until the island became connected to the Louisiana shore; that it then continued to grow by accretions added thereto on its eastward side until the year 1912, when the river returned to its old 1882 channel leaving this territory again an island but greatly enlarged by reason of the accretions added thereto. If these facts be established by the evidence, then Tullos Island, or Newman Towhead, as it is designated on Chart 47 of the Mississippi River Commission Survey of 1913-15, is Mississippi territory; the change in the channel of the river around the island not affecting the boundary line between the states.

Missouri vs. Kentucky, 11 Wallace 395, 20 L. ed. 116,
Indiana vs. Kentucky, 136 U. S. 1, 34 L. ed. 329,
Arkansas vs. Tennessee, 246 U. S. 158, 62 L. ed. 638.

In the case of Missouri vs. Kentucky, supra, the question for determination was the establishment of a part of the boundary line along the Mississippi river between the states of Missouri and Kentucky. The territory in controversy was Wolf Island, which at the time of the filing of the suit, was on the Missouri side of the main channel of the river. The case turned on the proposition of whether or not at the time the territory of Kentucky was formed with her boundary on the west fixed as the middle of the Mississippi River, Wolf Island was on the Missouri side, or on the Kentucky side of the middle of said river. The court laid

down the following rule of law governing the case:

> "It follows, therefore, that if Wolf Island, in 1763, or in 1820, or at any intermediate period between these dates, was east of this line, the jurisdiction of Kentucky rightfully attached to it. If the river has subsequently turned its course, and now runs east of the island, the status of the parties to this controversy is not altered by it, for the channel which the river abandoned remains, as before, the boundary between the States, and the island does not, in consequence of this action of the water change its owner. Heffter, p. 143, sec. 66; Caratheodery Du. Droit Inter., p. 62."

In the case of State of Indiana vs. State of Kentucky, supra, the question involved was the ownership of what is known as Green River Island, which at the time of the filing of the suit was connected to the Indiana shore by an old filled-up channel of the Ohio River. When Kentucky was created as a territory, its northern boundary at the point in question as defined in the act of creation was construed by the court to be the low water mark of the Ohio river on the north side of the channel. At the time of the creation of the territory the channel of the river ran between Green River Island and the Indiana shore. By a subsequent change in the river, however, this old channel was abandoned and became filled up so that the island was attached to the Indiana mainland. Under these facts, the court laid down the following rule as governing the case:

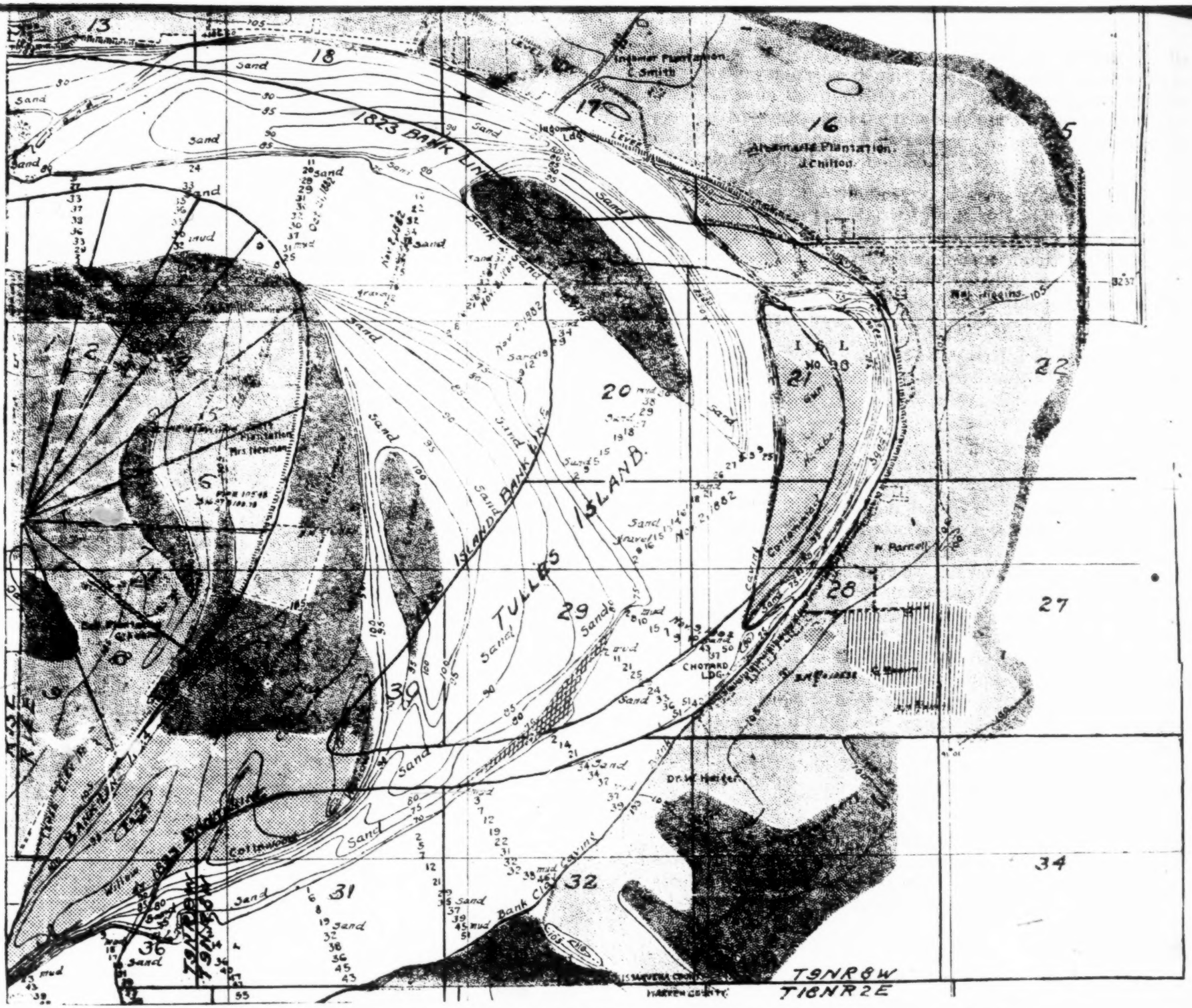
> "If when Kentucky became a State on the 1st of June, 1792, the waters of the Ohio River ran between that tract, known as Green River Island, and the main body of the State of Indiana, her right to it follows from the fact that her jurisdiction extended at that time to low-water mark on the northwest side of the river. She succeeded to the ancient right and possession of Virginia, and they could not be affected by any subsequent change of the Ohio River, or by the fact that the channel in which that river once ran is now filled up from a variety of causes, natural and artificial, so that parties can pass on dry land from the

> tract in controversy to the State of Indiana. waters might so depart from its ancient channel a leave on the opposite side of the river entire countie of Kentucky, and the principle upon which her jurisdi tion would then be determined is precisely that whic must control in this case."

In the case of Arkansas vs. Tennessee, supra, the cou held that where the Mississippi river suddenly abandone its old channel and formed a new one, as a result of whic the old channel filled up and became land, the filling u of this old bed should not be treated as accretion, but a the ultimate effect of avulsion. On this proposition th court had the following to say:

> "Certainly it can not be regarded as having the e fect of carving out an exception to the rule that whe the course of the stream changes through the oper tion of the natural and gradual processes of erosio and accretion, the boundary follows the stream; whi if the stream leaves its former bed and establishes new one as the result of an avulsion, the boundary r mains in the middle of the former channel. An avu sion has this effect whether it results in the drying u of the old channel or not. So long as that channel r mains a running stream, the boundary marked by is still subject to be changed by erosion and accretio but when the water becomes stagnant, the effect these processes is at an end; the boundary then comes fixed in the middle of the channel as we l defined it, and the gradual filling up of the bed ensues is not to be treated as an accretion to the sho but as an ultimate effect of the avulsion. The em gence of the land however, may or may not follow, it ought not in reason to have any controlling eft upon the location of the boundary line in the old ch nel."

From the foregoing, it is evident that the gist of th case, insofar, as conditions existing subsequent to the ye 1882 are concerned, is whether or not Tullos Island Island 98, entirely disappeared.



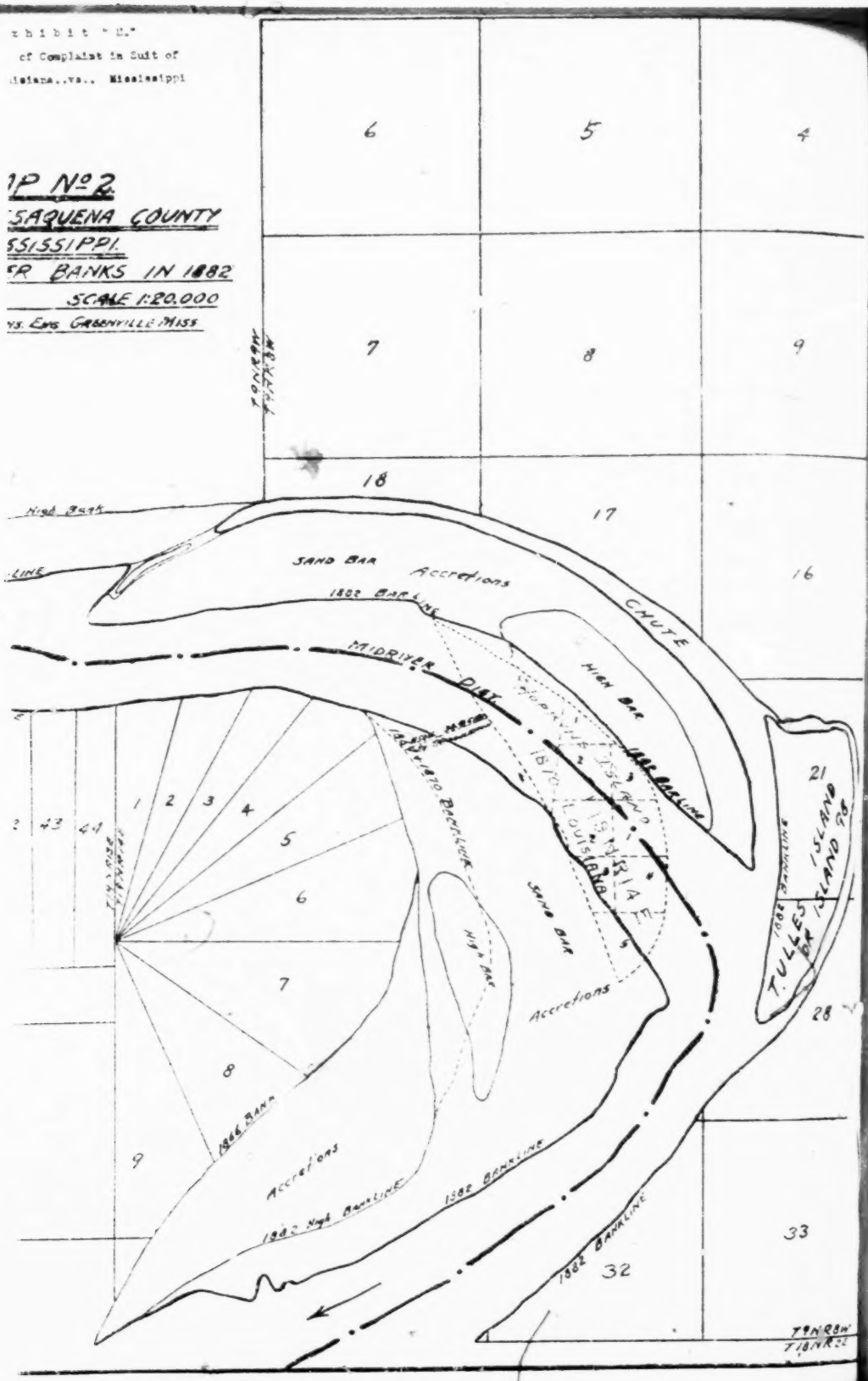
COMPLAINANT'S EXHIBIT "M", CHART 45, MISSISSIPPI RIVER COMMISSION SURVEY OF 1882.

Complainant in their brief at page 89 thereof attempt to show that Island 98, or Tullos Island, did entirely disappear. As proof of this statement, the court is cited to Mississippi River Commision Chart 45, Survey of 1882, (Complainant's Exhibit "M"); sheet 17 of the Mississippi River Commission Survey of 1882, with the shore lines of 1894 drawn thereon in red (Complainant's Exhibit "C"), and the testimony of the witnesses, E. T. Purnell, Captain Joseph V. De La Hunt, Captain Charles H. West, Captain George Prince, Captain W. H. Reed, Ernest Newman, George R. Newman and William Miller. These references made by counsel to the proof in the case will here be discussed in the order presented by them.

Complainant's Exhibit "M" Mississippi River Commission Chart 45, Survey of 1882, shows that Tullos Island, or Island 98, was in existence at that time. This chart also shows another island located to the northwest of Island 98, and not named on the chart. Captain Marshall, in his testimony, refers to these two islands as upper and lower Tullos Islands. R. p. 171, 175. There is no dispute but that both of these islands were Mississippi territory at the time the chart was made in 1882. This is shown most clearly by complainant's exhibit "M" where on Chart 45, complainant's witness West has superimposed the Mississippi 1823 and the Louisiana 1824 governmental surveys. This exhibit shows that the greater part of both upper Tullos Island and lower Tullos Island, or Island 98, as shown on the 1882 chart was a part of original Tullos Island as surveyed in 1823. It is of importance that these facts be kept clearly in mind, because of the confusion which otherwise would come about due to certain witnesses referring to upper Tullos Island by the name of Hopkins Island.

Counsel for complainant first refer to the testimony of E. T. Purnell, R. p. 264, 265, 271, 283 and 286. The gist of this testimony is merely that in 1893, '94 or '95, Island 98, or lower Tullos Island, disappeared. Even though this testimony was undisputed and conceded to be true, yet unless the complainants have also shown that upper Tullos Island washed away, then their case must fail. That this

island did not wash away is conclusively shown by the testimony of this very same witness. He refers to upper Tullos Island by the name of Hopkins Island. In order, however, to clearly determine what the witness meant by "Hopkins Island" counsel for defendant, referred him to complainant's Exhibit "H" which showed the position of Hopkins Island as surveyed by Louisiana in 1869 and 1870, superimposed in dotted lines on blue print of the 1882 survey. (The Hopkins Island surveyed by Louisiana in 1869 had entirely disappeared and was in the bed of the river when the 1882 River Commission Chart was made. See testimony of Charles H. West, R. p. 140). The witness when shown the blue print pointed out upper Tullos Island, marked on the blue print "high bar," as being what he knew as Hopkins Island, R. p. 277.



"COMPLAINANT'S EXHIBIT "H."

The testimony of this witness shows that upper Tullos Island, known to him as "Hopkins Island," never washed away. R. p. 275. This witness also testified that the channel of the river changed about Hopkins Island. R. p. 276.

N. B.: This witness's testimony is very significant and when analyzed goes far towards establishing the theory and proving the case of the defendant. The only point of difference between his testimony and that of witnesses for defendant is that this witness testified that lower Tullos Island completely washed away, while defendant's witnesses show that neither upper nor lower Tullos Island was destroyed. Even taking his testimony as true, it has only been shown that lower Tullos Island washed away, but that the channel of the river changed around upper Tullos Island, which did not wash away. If such be the true facts, then the theory of defendant has been established.

The next witness referred to by counsel in their brief is Joseph V. De La Hunt. R. pp. 292, 293, 294, and 295. The testimony of this witness, as the court will see, more firmly establishes and proves the defendant's theory than did that of the preceding witness.

Captain De La Hunt testified that Island 98, or Lower Tullos Island, completely disappeared. His testimony is equally as positive that upper Tullos Island, or Hopkins Island, or Hopkins Tow Head, as known by him, never disappeared. R. p. 298. His testimony is also to the effect that there was no channel to the west of Hopkins Island, or Hopkins Tow Head.

N. B.: This testimony carries to its logical conclusion that of complainant's witness, Purnell, who stated that the channel changed about Hopkins Island. This witness (De La Hunt) shows that the old channel west of Hopkins Island had filled up. It also bears out and supports the testimony of Captain Marshall to the effect that the channel of the river cut around to the north and east of upper Tullos Island, abandoning its old channel to the west of upper Tullos Island, which filled up so that the island became connected to the Louisiana shore.

The complainant's witnesses, Captain George Prince, R. p.

25, 26, 33 and 34; Captain W. H. Reed, r. p. 110, 120, 121, 122 and 128; Ernest Newman, r. p. 54, 55, 57, 58 and 63, and George R. Newman, r. p. 73 and 74, knew nothing about Island 98, it being undisputed that at the time to which their testimony was directed, i. e., subsequent to 1894, there was not an island in the main channel of the Mississippi river at the point in question; it having been attempted by complainant to show that prior to that time, Island 98 had disappeared, and by the defendant that the channel had gone around the islands to the north and east and they had become connected to the Louisiana shore by the old filled-up river bed. For this reason, their testimony concerning the existence or nonexistence of the island and whether or not it disappeared is worthless except in so far as it related to the physical facts existing on the tow head, or island, at the time of their observation. All of these witnesses are familiar with the depression running between Willow Point and the island at that time. R. pp. 39, 63, 69, 107, 108.

The witness Reed was also familiar with the place on the island, or towhead, where there is a high bank with cottonwoods growing on the top and a new deposit of soil at the bottom of the bank with willows on it. R. pp. 124 and 125.

N. B.: Captain Marshall's testimony shows that the depression referred to by these witnesses was the old filled up 1882 river channel. R. pp. 172, 173, 178; and the defendant's witness, Albritton, shows that the high bank with a new deposit at the bottom referred to by complainant's witness, Reed, was the west bank of the old 1823 island chute. R. p. 38.

Counsel for complainant next refer to the witness William Miller as testifying to the fact that Tullos Island completely disappeared. This witness not only failed to testify that the island disappeared, but he testified positively that it did not disappear, but that it was there in 1916 and was there, "this Sunday. I saw it Monday. I pass it once or twice a week." R. p. 304.

The only other witness referred to by counsel in their

brief as testifying that the island washed away is Captain Charles H. West. This witness was evidently the star witness on whom complainant pinned its hopes and faith, and references are made to his testimony reverently, and the facts testified to by him are referred to as proven, because "ipse dixit."

This witness testifies that Island 98 completely washed away and disappeared, and that Willow Point by accretion built over the location which formerly had been occupied by the island. R. p. 143 and 144. He bases this testimony upon two maps, one Chart No. 45 of the Mississippi River Commission Survey of 1882 (Complainant's Exhibit "M") and Sheet 17 of the Mississippi River Commision, which is a small scale map of the 1882 survey with the shore line of the 1894 survey superimposed thereon in red lines. (Complainant's Exhibit "C"). The gist of this testimony merely is that because the shore line in 1894 was east of the shore line in 1882, it necessarily had moved to its 1894 location as a result of accretion.

This witness was unaware of the fact that the 1894 survey contained the same character of detail and was similar in all respects in its preparation to Chart 45, Mississippi River Commission Survey of 1882. This fact possibly accounts for his using the small scale Sheet 17 rather than the original field or work sheets of the 1894 survey in giving his opinion testimony regarding the change in the channel of the river. It is inconceivable that had the witness had the benefit of the work or field sheets of the 1894 survey showing all details of elevation and contours that he would have fallen into the glaring error that he did.

Counsel for complainant, either by blindly following Captain West's testimony with reference to the non-existence of the detailed survey in 1894, or by failing to examine Defendant's Exhibits, 4-A-B-C or if having examined them by making only a superficial examination of the same, have fallen into the same error as Captain West. Their brief is replete with statements as to the ignorance of Captain Marshall in assuming that there was a detailed topographical survey in 1894. Captain West in his testimony says:

"The survey of 1894 **did not** take in the topography. It only took in the change in the position of the river alone, and that survey was printed on the Charts of the 1882 survey." R. p. 151.

On being asked about the original field or work sheets, the witness West again denies the existence of a detailed survey in 1894 and states that if these sheets were obtained only the shore line would be shown thereon. R. pp. 157, 158.

Counsel in their brief at page 49, in referring to this testimony of the witness West say the following:

"Comment: This shows there was no topographical survey between 1882 and 1913."

On page 58 of the brief counsel in referring to the testimony of Captain Marshall explaining what Exhibits 4-A-B-C, blue prints of the original work sheets of River Commission Survey of 1894 show, said:

"This testimony is without foundation. The survey of the Mississippi River Commision need only be examined to show its fallacy."

Again at page 61 of the brief counsel say:

"The witness was evidently ignorant of what the survey of 1894 showed, and had assumed that the survey of 1894, like the survey of 1882, showed the topography and elevation, when it did nothing of the kind, but showed only the changes in the position of the river alone."

Again at page 66 of the brief counsel say:

"Comment: The error of the witness in this regard has heretofore been explained. He evidently did not know that no new chart was made from the survey of 1894, but that this survey was superimposed on the chart of 1882. (R. p. 149, 151, 152.)

All of the testimony of Mr. Marshall showing topographical elevations, etc., in 1894 is based on the error which arose from his using the chart of the survey of 1882."

On page 67 of the brief, counsel say:

> "Certainly these deductions of Captain Marshall, based on the errors of fact and ignorance of what the survey of 1894 shows can not overthrow the testimony of the eye witnesses to the fact that Island 98 entirely disappeared, especially when such testimony is shown to be true by the survey of the Mississippi River Commission of 1894."

On page 97 of complainant's brief, counsel say:

> "Captain H. M. Marshall was evidently partly in error in assuming that the chart of the survey of the Mississippi River Commission in 1894 showed the topography and elevations of said year, when as a fact, the contour lines on said chart were of land that existed in 1882 and had largely disappeared in 1894."

Since the testimony of Captain West and of Captain Marshall is so directly antagonistic, and since the testimony of each of them is so important for the determination of the deciding factor in this case, that is, whether or not Tullos Island completely washed away, it becomes of the utmost importance that it be determined which of the witnesses is correct with reference to their statements concerning the Mississippi River Commission Survey of 1894. If Captain West's testimony that there was not a detailed topographical survey of 1894 be correct, then his testimony to the effect that the change in the channel was the result of erosion on the Mississippi shore and accretion to the Louisiana shore is of value because there would be nothing shown thereon in so far as the elevations, depressions and contours of the land are concerned to contradict it. On the other hand, if Captain Marshall's testimony that there was a detailed topographical survey in 1894 be correct, then the testimony of Captain West is entirely worthless because of the fact that he has utterly disregarded those things which are most important in giving weight and worth to the testimony of an expert witness whose testimony is based entirely upon maps.

To show that Captain West was in error and that coun-

sel for complainant have blindly followed him in it, it here considered only necessary to refer the court to an e amination of complainant's Exhibits 4-A-B-C, which a blue prints of the original field survey or work sheets the Mississippi River Commission Survey of 1894, certifi to by the Secretary of War as being true and correct.

Captain West's testimony shows that field notes a work sheets of the 1894 Survey were on file in the office the secretary of the Mississippi River Commission in S Louis, R. p. 157 and 158, and Captain Marshall's testimo shows that Exhibits 4-A-B-C to his testimony are blue prin of the original fi'l sheets of the 1894 Survey. R. p. 17 The field sheets themselves, as indicated by sheet numb 5½, show the following character of detail:

"Mississippi River Commission,

Office of Secretary.

Low water survey of Mississippi River.

Arkansas River to Vicksburg.

Shore lines, bars and hydrography as shown by s vey made from October 20 to December 15, 1894.

W. G. Comber, Chief of party.

E. L. Armand, O. N. Axtell, Topographers, Book N 2903, Book No. 2906-2909.

T. C. Hockridge, E. D. Jones, Hydrographers, Bo No. 2889.

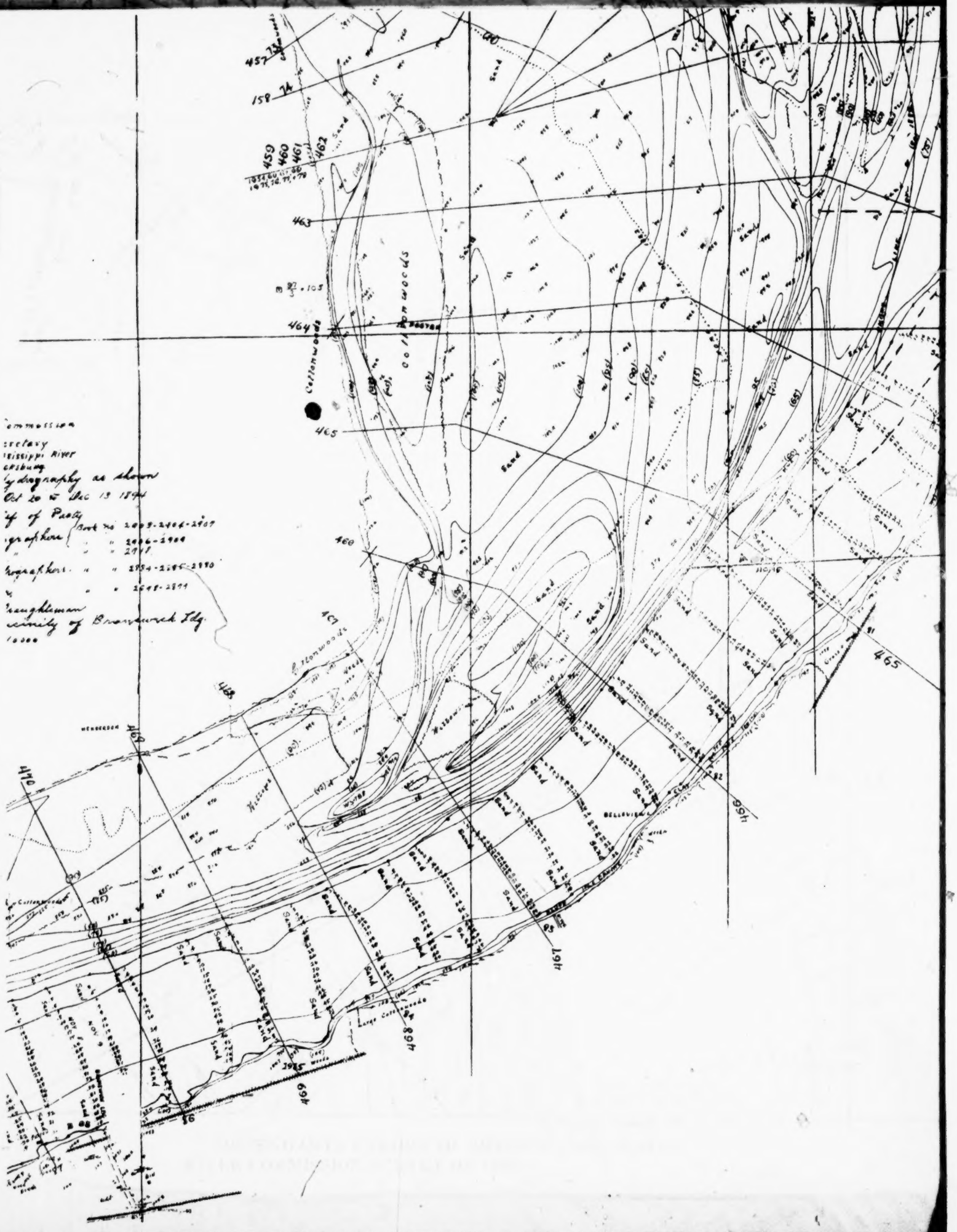
C. A. Bonfils, Leveler. (Book No. 2899.)

Gustav Bischoff, Draftsman.

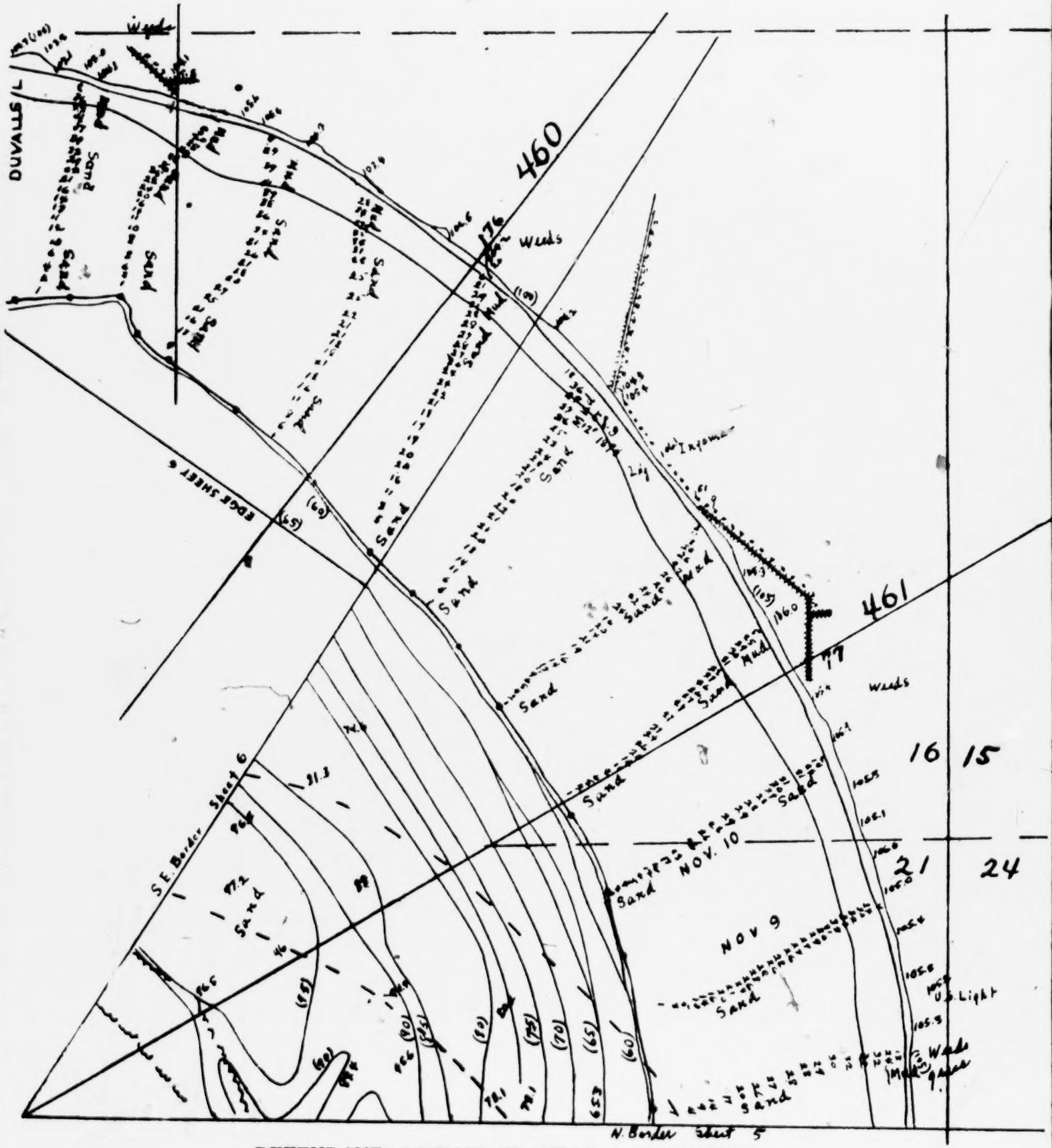
Field Sheet No. 5½—Vicinity of Duvall's, L. D. Landing.

Scale, 1:10,000."

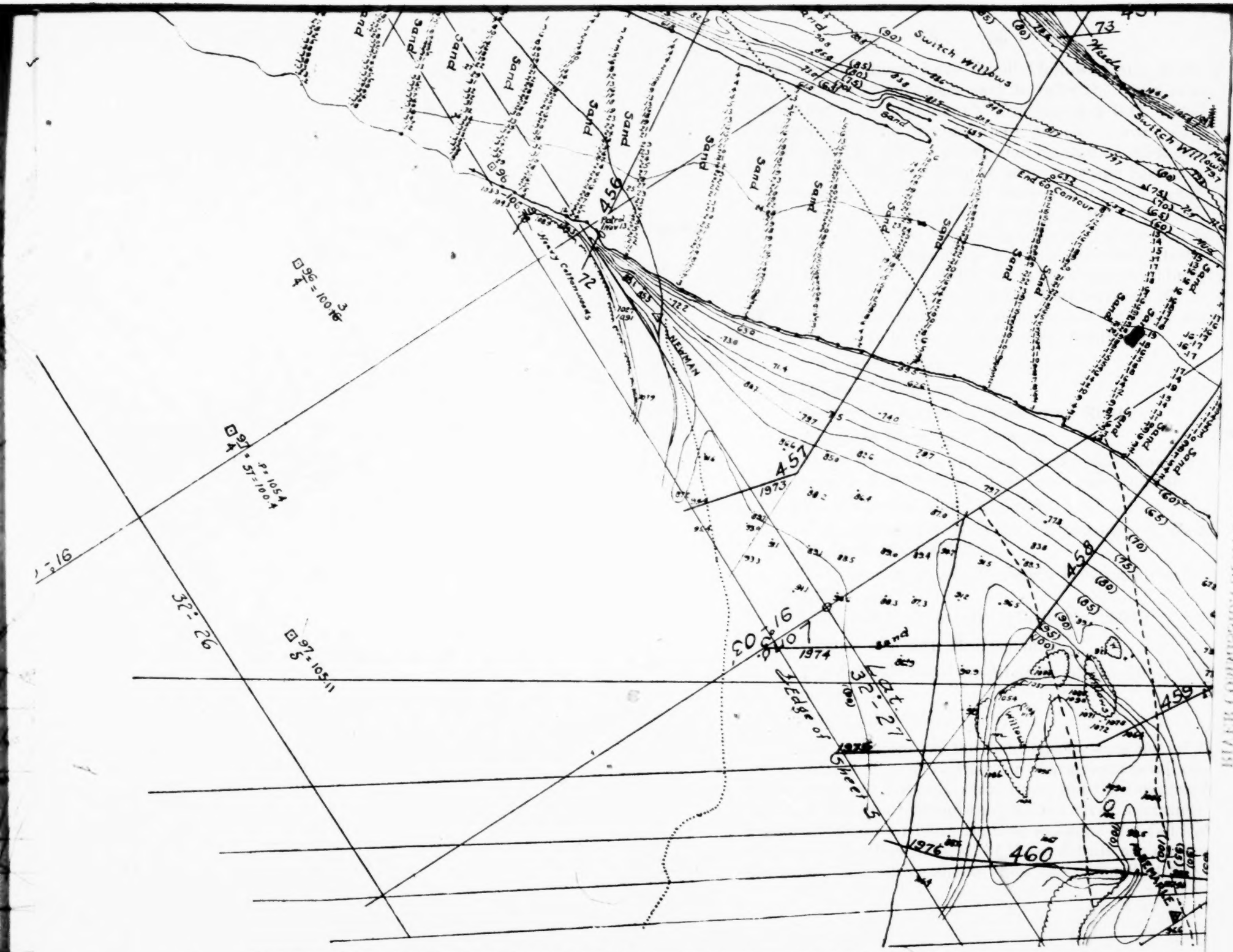
If these notations on the field sheets were not of " selves sufficient to show that the character of detail c by the map was not only shore lines, but the topograp the land and the hydrography of the river, certainly necessary to do no more than to examine the field s themselves to show that all of these details are cove the work. The three sheets show the channel of th



DEFENDANTS EXHIBIT 4A, SHEET NO. 5, MISSISSIPPI RIVER SURVEY OF 1894.



DEFENDANTS EXHIBIT 4B, SHEET 5½ MISSISSIPPI RIVER COMMISSION SURVEY OF 1894.



DEFENDANTS EXHIBIT 4C, SHEET NO. 6, MISSIS SIPPI RIVER COMMISSION SURVEY OF 1894.

around to the east and north of the location of upper and lower Tullos Island in 1894. Soundings in the river are shown, to the south and west of the river is shown the land, and its topography is indicated by contour lines, elevations and notations as to the character of the soil, such as mud and sand, and the character of timber or growth shown thereon, such as grass, weeds, willows and cottonwoods. With these exhibits in evidence it certainly would be treating the survey of the Commission with scant regard to say that these field sheets do not show a detailed topographical history of the territory in question.

Counsel for complainant, however, attempt to explain this away by saying that the detailed data shown on these field sheets was merely copied or taken from the data shown on the Mississippi River Commision Chart No. 45 of the 1882 Survey. This statement, however, is deserving of little more consideration than that which denied the existence of the details themselves. It is necessary only that a comparison of the data shown on the 1882 map with that shown on the 1894 field sheets be made to show the error in this regard. The most obvious and glaring inconsistency in this statement is shown by the fact that the 1894 Survey with the river to the north and east of the location of Tullos Island in 1882, shows the soundings in the river. Counsel will probably have a difficult time in explaining how the soundings in the channel of the river as it existed in 1894 were taken from the chart of the 1882 survey. Another glaring inconsistency in this statement is shown by the fact that the channel of the river in 1882, shown on Chart 45 in detail by soundings is shown on the 1894 map as being land, marked by elevations and contours and shown thereon as being 20 feet above the level of the river. There are numerous other differences, to which the attention of the court could be called, to show the utter disregard which counsel have given to these maps, such as the difference in the elevations of the various points as shown on the 1882 and 1894 Surveys, but these will not be touched on here because they are deemed unnecessary.

We think that it is proven beyond question that the 1894

Survey shows the same character of detail and gives the same data that the 1882 Survey gives, and that both Captain West, witness for, and counsel for the complainant, who blindly followed his testimony, are mistaken when they say that there was no Survey in 1894 of the same character as the Survey of 1882. If this be true, then it is evident that the testimony of Captain West is entitled to little or no weight because he utterly disregarded the essential factors which should have controlled his opinion.

Having now discussed the testimony offered by complainant to show that Tullos Island entirely disappeared, defendant will attempt to show that this Island did not disappear.

Complainant's witnesses, E. T. Purnell, and Joseph V. De La Hunt, show that upper Tullos Island did not wash away. R. pp. 275, 277 and 298.

Defendant's witnesses, William Miller, R. p. 304, Lawrence Townes, R. p. 220 and 231, and R. E. Foster, R. p. 209, show that neither upper nor lower Tullos Island completely washed away.

The testimony is undisputed that in the year 1893 both islands were in existence and that there were trees growing on them. (Testimony of Purnell, R. p.p. 264, 282, De La Hunt R. p. 292, Miller R. p. 304, Townes R. pp. 221 and 222, Foster R. pp. 209 and 210, Marshall R. p. 175).

The testimony of the complainant's witness, E. T. Purnell, shows that the channel of the river changed around Hopkins Island (upper Tullos Island as shown by his testimony, R. p. 277), and the testimony of the complainant's witness, De La Hunt, shows that the channel of the river had come to the north and east of this island; and that the channel was in that location, and the island (upper Tullos Island) was there in 1908. R. pp. 292 and 298. All of the witnesses who were familiar with the physical facts existing on the territory in dispute after the year 1894 are agreed that there was a depression between Willow Point and what was variously designated by them as Island 98, or Newman's Towhead, and the testimony of Captain Marshall that this depression was in the same location as the river channel in 1882 is undisputed.

The testimony of defendant's witness, Albrittain, shows that in 1924 he went upon the Towhead (islands) with a surveyor and found high ground in the same location as that of the islands in 1882. The soil on this high ground was of the same character as the soil on the mainland and large cottonwood trees, the largest on the towhead, grew there. This high ground extended to the river on the west, and was bounded on the east by a steep bank, shown to be in the location of the west bank of the 1823 island chute. To the east of this high ground was made land with soil of a different kind and covered with a different growth-willows. R. pp. 243, 244, 252.

Complainant's witness, W. H. Reed, corroborates this testimony, showing that he was falimiar with the high bank, the varying character of soil deposits, and growth thereon at this particular point. R. pp. 124, 125.

N. B.: This testimony shows that the island could not have washed away. On the contrary, it is evidence of the fact that the channel of the river had gone around this high ground (islands) making a new channel to the east and from there gradually moved eastward by erosion of the main Mississippi shore, the islands being gradually added to and enlarged by accretion.

The testimony of Captain Marshall, giving his interpretation of the history of the change in the river from 1882 to 1894 based on the 1894 field and work sheets and the map of the Mississippi River Levee District, showing changes in the channel of the river from 1882 to 1896, should be considered with special reference to the above testimony because of the fact that his interpretation of the maps is borne out practically in every detail by the testimony of these witnesses. It should also be borne in mind, in examining the testimony of this witness that his opinions are not unsupported by facts, but each statement by him is based on data obtained from the charts to which he referred, or is based on personal knowledge of the situation. As has been stated before, a most important thing to be kept in mind in considering the testimony of this witness is, that there is no dispute of the fact that both upper and

lower Tullos Island were in existence as late as 1893.

Captain Marshall, using as a basis for his testimony Exhibits 4-A-B and C, first shows that at the time the Survey was made in 1894 there was high ground in the same location as Tullos Island in 1882 and of a slightly higher elevation than were the Islands at that time (1882). To the west of the location of this high ground there is shown low ground, this low ground being 20 feet lower than the high ground, and some 25 feet above the water level. R. p. 172-173. The witness next shows by superimposing over the 1882 Survey a tracing of the 1894 Survey that the high ground referred to was in the identical location as the Islands in 1882, and that the low ground was in the identical location of the river in 1882. R. p. 178. He next shows that there was timber, cottonwoods and willows, growing on this high ground. R. p. 173-174. The witness next, by comparison of Chart 45 of the 1882 Survey and Chart 47 of the 1913 Survey, shows that the river in 1913 had returned to the same location as occupied by it in 1882.

It will, therefore, be seen, that this witness has shown the following facts:

1. That in 1894 there was high ground practically of the same elevation and in the same location as the Islands in 1882.

2. That the channel of the river was to the east of this high ground, and over the location of the old 1823 Island chute.

3. That to the west of this high ground there was low ground in the identical location as the channel of the river in 1882.

4. That there were cottonwood and willow trees growing on this high ground at the time of the Survey in 1894.

5. That the channel of the river in 1913 was in the same location as in 1882.

These facts are not and cannot be disputed because they are shown positively by the official maps and charts introduced as exhibits in the case. With these facts as a basis

the witness then gives it as his expert opinion that the channel of the river changed so as to cut around to the north and east of upper and lower Tullos Island and made a new channel there by widening and straddling the old 1823 Island chute. With these facts established it would not take an expert to reach the conclusion given by Captain Marshall, the facts themselves being so plain and convincing that the humblest citizen could reach no conclusion other than that given by the witness. It will be recalled that the testimony is undisputed that the Islands were in existence in 1893, and yet one year later by the Survey of 1894—it is shown that there were then cottonwood and willow trees growing on the high ground. (The Islands.) It is inconceivable that if the island had completely washed away, as contended by complainant, the towhead could have built back in that one year and have had growing upon it cottonwood and willow timber. The analysis of the undisputed facts reduces the contention of complainant to an absurdity.

Captain Marshall further substantiates his testimony in this regard by explaining the facts shown by the Mississippi River Levee District map of Albemarle Bend which was prepared by Captain C. H. West in 1908, but introduced as an exhibit to the defendant's testimony. The progressive building of the levees as disclosed by this map shows how the caving by the river, which was confined to the lower part of lower Tullos Island in 1882 had, by 1888, shifted above and behind or to the north and east of Tullos Island, and from there gradually widened out the chute to the east of Tullos Island. R. pp. 180-181.

The inescapable and incontrovertible fact is that the engineers of the Mississippi River Commission in 1894 found the islands in their old position with timber growing thereon and delineated them on their work or field sheets, and on the same survey and work or field sheets showed the river had passed around them to the north and east.

The fact is also inescapable that all of the maps or charts introduced in evidence save only the blue prints made by Captain West and offered as Exhibits to his testimony show

the islands. As was well explained by Captain Marshall:

> "Q. Does any other drawing or map which you have seen, except this map, or No. 3 of C. H. West, lose sight of the island?
>
> A. No, I have not seen any of the maps except the Mississippi River Commission maps which have been under discussion, the 1 to 10,000, 4-A-B- and C, the one inch to the mile, 17, Exhibit 3, those are the only maps that I know of, except the one issued with the superimposed lines on Sheet 17 showing the 1894 line, from which, I presume, Captain West prepared his Exhibit I. None of those shown was accretion, and none of them have the island left off."

In this connection the fact must not be lost sight of that during this entire period of time the territory comprising the islands was assessed for taxation by Issaquena County in accordance with the laws of the State of Mississippi (as will be more fully discussed under the next subdivision of this brief) by the owners thereof giving in the same under oath to the assessor with the value thereof fixed by them; that the acreage, valuation, and ownership of these lands varied during the years; that taxes thereon were paid to the State of Mississippi, or in default thereof the lands were sold by the State. These facts show not only that the State of Mississippi exercised acts of sovereignty, dominion and control over the territory but also that it was actually in existence during this period of time.

It is, therefore, respectfully insisted that the testimony of the witnesses and the proof furnished by the maps and other exhibits in this cause show conclusively that Tullos Island did not wash away, but that the channel of the river changed about it, so as to cut around to its north and east side, leaving the old river bed to fill up and connect the island with the Louisiana shore.

III.

EVIDENTIARY VALUE OF EXHIBITS A TO N.

Before closing this brief it will not be amiss to give some consideration to the question of the evidentiary value of the

defendant's exhibits A-N. These exhibits have been discussed in the preceding pages of this brief for the purpose of showing that from the time of the earliest surveys and especially during the years 1882-1894, the State of Mississippi has claimed these lands and has exercised dominion and sovereignty over them; while the State of Louisiana did not in any way assert or exercise control or sovereignty over them, but impliedly conceded such sovereignty to Mississippi.

Counsel for complainant do not undertake nor attempt to show that the State of Mississippi was not, during this period of time, exercising acts of dominion and sovereignty over this territory, by assessing it for taxation, selling it for the non-payment of taxes, etc., but are constrained to treat these facts lightly and as being of little value. In speaking of these assessments counsel in their brief at page 98 say:

> "The assessors in making these assessments do not survey the land, but merely go to the deed records and year after year assess the same property over again many times, long after the property has washed away. Such assesments prove only rem ipsam, that is, that they made such assessment."

This statement by counsel in their brief is unwarranted, and is unsupported, either by law or by the facts in the case.

Sections 489, 490, 491, 492 and 495, Mississippi Code of 1880, provided the method for the assessment of lands in the State of Mississippi during this period of time. These sections provided that: "Lands shall be assessed once in every four years according to the intrinsic value to be judged of by the owner or person having possession or charge thereof on oath, etc."

Sections 490, 491, 492 and 495 provide how the land rolls are made up and how the lands are described thereon and assessed. These sections show that the duty is strictly imposed upon the assessor to see that all the land in his county appears on the assessment roll, and that such lands are properly assessed for taxation.

Section 505 imposes the duty on the board of supervisors of examining the assessment roll for the purpose of ascertaining that it embraces all of the land in the county and correctly represents its ownership.

Section 507 provides that:

> "In case of the destruction or deterioration in value of any real estate by any casualty, etc. * * * the board of supervisors shall have power * * * to change the assessment so as to reduce or increase it to the true value of the property, etc."

N. B. For full text of these Code sections see appendix.

So it is seen that instead of the assessment being made in the haphazard manner suggested by counsel in their brief, the roll is very carefully made up by the owner of the property giving in the same, under oath, to the assessor. The duty is also imposed on the board of supervisors to carefully examine the roll to see that the same embraces all the property in the county subject to taxation, and the power is given to them, in case it is shown that any property on the rolls has been destroyed, to strike the same therefrom, or to reduce its value in accordance with the true facts.

There being no proof that the provisions of the law in this regard were not followed, it must be presumed that the officers of Issaquena County in the performance of their official duties performed them in the manner required by the law.

With reference to the map of East Carroll Parish, introduced by the defendant, counsel say the following in their brief at page 99:

> "The map of East Carroll Parish, introduced by defendant, prepared by a Mr. Montgomery, not made from any survey at the time of its execution, but evidently made from the land survey of the United States Government of 1824, cannot show what accretions or erosions occurred since then, and is without any value as evidence when it is in direct contradiction of the charts of the Mississippi River Commission, made from

actual surveys, at the time, and oral testimony of eye-witnesses."

It is evident from this statement that counsel have entirely misconceived the object and the purpose for which defendant introduced this map. The purpose of introducing it was not to show that the surveys of the Mississippi River Commission in 1882 and 1894 were incorrect, but only for the purpose of showing what territory East Carroll Parish, Louisiana, claimed as its own and over which it was exercising acts of sovereignty, dominion and control.

This map as certified and authenticated pursuant to the agreement entered into by counsel, as disclosed by the record at page 319, shows it to have been made by direction of the board of police of East Carroll Parish. The record, therefore, shows that not only did East Carroll Parish fail to exercise acts of sovereignty, dominion or control over the territory here in dispute, by failing to assess the same for taxation, but by the adoption of this map as the official map of the parish, has recognized that it has no right to such lands.

The defendant takes the position that these facts should have great weight with the Court in determining the merits of this controversy.

The rule is well settled that where the question is one of boundary between two states of the Union, long acquiescence in the location of a particular boundary and the exercise of dominion and sovereignty over the territory within it is conclusive as between the states.

Rhode Island vs. Massachusetts, 4 Howard 591, 11 L. Ed. 1116,

Missouri vs. Kentucky, 11 Wallace, 395, 20 L. Ed. 1116,

Indiana vs. Kentucky, 136 U. S. 479, 34 L. Ed. 329, 10 Sup. Ct. Rep., 1051,

Virginia vs. Tennessee, 148 U. S. 503, 37 L. Ed. 537, 13 Sup. Ct. Rep. 728,

Maryland vs. West Virginia, 217 U. S. 1, 54 L. Ed., 645,

Arkansas vs. Tennessee, 246 U. S. 158, 62 L. Ed., 638,
Michigan vs. Wisconsin, 270 U. S. 295, 70 L. Ed. 595,
Oklahoma vs. Texas, 260 U. S. 606, 67 L. Ed. 428,
Oklahoma vs. Texas, 272 U. S. 19, 71 L. Ed. 145,
Franzeni vs. Layland, 120 Wisconsin 72, 97 N. W. 499.

In the case of Indiana vs. Kentucky, supra, the court said:

> "This long acquiescence in the exercise by Kentucky of dominion and jurisdiction over the island is more potential than the recollections of all the witnesses produced on either side. Such acquiescence in the assertion of authority by the State of Kentucky, such omission to take any steps to assert her present claim by the State of Indiana, can only be regarded as a recognition of the right of Kentucky too plain to be overcome, except by the clearest and most unquestioned proof. It is a principle of public law universally recognized, that long acquiescence in the possession of territory and in the exercise of dominion and sovereignty over it, is conclusive of the nation's title and right."

In the case of Virginia vs. Tennessee, supra, the court said:

> "As said by this court in the recent case of Indiana vs. Kentucky, 136 U. S. 479, 516 (34: 329, 335) it is a principle of public law, universally recognized, that long acquiescence in the possession of territory, and in the exercise of dominion and sovereignty over it, is conclusive of the nation's title and rightful authority. In the case of Rhode Island vs. Massachusetts, 45 U. S. 4 How. 591, 639 (11:1116, 1139) this court, speaking of the long possession of Massachusetts, and the delays in alleging any mistake in the actions of the commissioners of the colonies, said: 'Surely this, connected with the lapse of time, must remove all doubts as to the right of the respondent under the agreements of 1711 and 1718. No human transactions are unaffected by

time. Its influence is seen on all things subject to change. And this is peculiarly the case in regard to matters which rest in memory, and which consequently fade with the lapse of time and fall with the lives of individuals. For the security of rights, whether of states or individuals, long possession under a claim of title is protected. And there is no controversy in which this great principle may be invoked with greater justice and propriety than in a case of disputed boundary.' "

In the case of Louisiana vs. Mississippi, 202 U. S. 1, 50 L. Ed. p. 932 and 934, the court said:

"The record contains much evidence of the exercise by Louisiana of jurisdiction over the territory in dispute, and of the general recognition of it by Mississippi as belonging to Louisiana. Apparently Louisiana had exercised complete dominion over it from 1812 with the acquiescence of Mississippi, unless the fact that the latter made a general reference to islands within 6 leagues of her shore in her Code of 1880 indicated otherwise. But the evidence fails to satisfy us that she attempted any physical possession or control until after 1900. The few instances referred to as showing that Mississippi asserted rights in the disputed area are of little weight and require no discussion."

In the case of Maryland vs. West Virginia, supra, the court said:

"It is true that there has been more or less contention as to the true boundary line between these states. Attempts have been made to settle and adjust the same, some of which we have referred to, and the details of which may be found in the very interesting document to which we have already made reference, the report of the committee of the Maryland Historical Society."

* * * * *

"Independently or any effect due to the compact as such, a boundary line between states or provinces, as between private persons, which has been run out, located, and marked upon the earth, and afterwards recog-

nized and acquiesced in by the parties for a long course of years, is conclusive, even if it be ascertained that it varies somewhat from the courses given in the original grant; and the line so established takes effect, not as an alienation of territory, but as a definition of the true and ancient boundary."

In the case of Franzeni vs. Layland, 120 Wisconsin, 72, the court said:

> "The undisputed evidence that for over fifty years, for all governmental and other purposes, the territory between Coon Slough and the Mississippi River proper has been considered by this state, the general government, and the State of Minnesota as well, as east of the boundary line between the two states, would be conclusive evidence, at least in a suit between private parties, of its proper location. Acquiescence for a long period of time is evidentiary of the right involved between sovereignties as well as between individuals."

In the case of Oklahoma vs. Texas, 260 U. S. 606, 67 L. Ed. 428, the court said:

> "Texas has been exercising jurisdiction over the area and asserting proprietorship of the soil for more than half a century, and has surveyed and disposed of it all, the earliest disposals being in 1856. Some of the later surveys seem to conflict with those first made, but all name the river bank as a boundary. In those of 1856, and possibly others, it was the controlling call. See Schnackenberg vs. State-Tex. Civ. App.- 229 W. 934; Cordell Petroleum Co. vs. Michna, 276 Fed. 483. The jurisdiction and title of Texas stood unchallenged until shortly before this suit. Our conclusion is that the claim that the river, or any part of it, ran south of this area in 1821, is not sustained. So the boundary follows the cut bank around the northerly limit of the area."

The defendant does not in this case take the position that these acts of dominion and sovereignty, exercised over the territory in question, by assessing the same for taxation, selling it for non-payment of taxes, and dealing with

it as its own, is alone sufficient to establish its title to the lands in controversy, even though such acts of sovereignty are coupled with acquiescence therein by the State of Louisiana. The State of Mississippi, however, does take the position that these acts of dominion and sovereignty should be given great weight and are strong evidence of the rights of the parties with reference thereto.

IV.

CONCLUSION

The State of Mississippi, therefore, respectfully contends that the State of Louisiana has failed, first, to prove that the change of the Mississippi River from its 1823 to its 1882 channel was the result of accretion. If this be true, then the case of the State of Louisiana must fail, not only as to the territory now embraced in what is known as Newman's Tow Head, but also as to that territory now on the Louisiana mainland and lying between the present channel of the river and the thread of the stream of the river in 1823.

But if the court takes the position that the State of Louisiana has shown this change to be by accretion, the defendant State of Mississippi still contends that the complainant has not shown the change in the river from its 1882 to its 1894 channel to be a result of erosion of and washing away of Tullos Island and the extension of the Louisiana shore line by accretion; but that the proof establishes the fact that such change was occasioned by the river eating into the Mississippi mainland, north and east of Tullos Islands and thereby passing around them, and upon filling of the old channel leaving the former island intact but connected to the Louisiana shore. If the State of Louisiana has failed to establish this fact, then what is now shown on the maps and designated as Newman's Tow Head should be adjudged by decree of this court to be Mississippi territory and the boundary between the States of Louisiana and

Mississippi at the point in question fixed as the middle of the channel of the Mississippi River as it flowed in the year 1882.

Respectfully submitted,

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APPENDIX

MISSISSIPPI CODE OF 1880

Assessment of Lands

Sec. 489: Lands shall be assessed once in every four years, according to intrinsic value, to be judged of by the owner or person having possession or charge thereof, on oath, taking into consideration the improvement, also the proximity to navigation, or to any town, city, village, or road, and any other circumstance that may tend to enhance the value, and not at what it might bring at a forced sale, but what the owner would be willing to accept and expect to get for it, if he was disposed to sell it; and if any person shall deliver or disclose to any assessor or deputy assessor, any list, statement or return, in regard to his land, which, in the opinion of the assessor or deputy assessor, is false or fraudulent, or contains any understatement or under-valuation, it shall be lawful for the assessor or deputy assessor to make an assessment of said land, at a valuation equal to the highest rate per acre, for any lands adjoining said land so under-valued, which may have been returned under oath. Land not given in by any person, shall be valued in the same manner by the assessor; and should there be a difference in the value of different parcels of a tract, the several parcels of such different values shall be separately assessed; *provided,* that the first assessment, under this law, shall be made in the year 1883, and until that shall have been made, the assessment in the year 1879, shall continue in force, and be the basis of taxation and collection.

How Land Roll Made Up

Sec. 490: Each assessor shall keep the land assessment roll separately, and he shall commence the same in the lowest number of range and township in his county, and in the northeast corner of each township, and shall proceed, numerically, with all the sections, townships, and ranges in his county, first setting down all the subdivisions of each section, as they belong to different individuals, or the whole section together, if owned by one person and not divided on account of parcels being of different value; and if more than one person shall claim to be the owner of the same

tract or parcel of land, the assessor shall so state in his assessment roll, and shall only be entitled to the value of one assessment, and the tax collector shall only collect the taxes on one assessment; land of the United States, or land exempt from taxation, shall be set down in separate columns, without the value. Lands not surveyed according to the plan of the government surveys, shall be set down by the designation used on the government maps, or by other means, by which they may be distinguished; and if parts of such lands shall be owned by different persons, such part shall be referred to by quantity, and such short memorandum as may be convenient to show the locality. In assessing land situated in any city or town, the assessor shall proceed according to the plat or plan thereof, commencing with the lowest number of square and lot, or other subdivision, and proceeding numerically, with all the lots in a square, and all the squares in the city or town, until completed; but no failure to observe any of the requirements, shall be held to vitiate any assessment, if the land be so described as to be identified; and it shall be a sufficient identification of land to describe it as "the land of ..... (the person owning or claiming it), occupied by.....," or "that part of (section or other known division, designating it) owned or claimed by.....;" or "the lot on which resides" or "the lot occupied by..... .....;" or "by the name of which it may be known, or by any description, which will furnish a sure guide for the ascertainment by parcel evidence of the particular land intended.

Description of Land

Sec. 491: In assessing land, a description of it as a part of a designated tract or division, shall be held to embrace such part as is the subject of separate ownership as one tract or division whether owned by one or several jointly; and when part of a designated tract or division shall be sold for taxes; the sale shall pass the title of such part as was the subject of such separate ownership when it was assessed; and the sale of a specified number of acres of a tract containing more or a specified portion of a tract shall

pass an undivided interest in the whole tract equal to the proportion which the number of acres or portion sold, bears to the whole tract; and when part of a known tract or division of land is assessed by a description which identifies it, any other part of it which is assessed, but not so identified, shall be held to embrace all of such tract or division not included in the part identified; and parol testimony shall always be admissible to apply a description of land on the assessment roll, or in a conveyance for taxes, where such testimony will show what land was assessed and sold, and there is enough in the description on the roll or conveyance to be applied to a particular tract of land by the aid of such testimony.

What Carried Forward to Last Page

Sec. 495: To facilitate the assessment and collection of taxes, the board of supervisors of each county shall procure, if not already done, and keep a land book, or book of maps of all the townships and fractional townships in the county, which book shall be well bound, and shall be deposited in the office of the clerk of the board of supervisors; and shall procure lists of lands in their counties owned by the United States, and no allowance shall be made to the assessor, who does not show upon his assessment roll an assessment of every acre of land in his county, as shown by the map or townhips in his county, if there be such; and it shall be the duty of the board of supervisors to carefully compare the assessment roll with the said maps, with a view to the enforcement of this provision.

Roll to Embrace and Correctly Describe All Lands.

Sec. 505: It shall be the duty of the board of supervisors to carefully examine the assessment roll of lands before approving it, to see that it embraces all of the land in the county, and correctly represents it as being the property of individuals, or the State, or United States, and taxable or not taxable, according to law, and that all land correctly described according to law, so as to be identified with certainty; and all land improperly omitted from such roll shall be added thereto by such board or under its direction, and land incorrectly or insufficiently described shall be caused

by such board to be properly described on said roll before it shall be approved; and the assessor shall at once make all corrections in the said assessment roll, which said board may direct, but the board may cause such corrections to be made by the clerk of such board.

Change in Assessment in Certain Cases

Sec. 507: In case of the destruction or deterioration in value of any real estate, by any casualty, or in case of clerical error in the assessment rolls, or in case of over-assessment, known to be such, or in case of a change of ownership, after assessment, or in case of an increase of value by the erection of improvements, the board of supervisors shall have power, at any time, on the application of a party interested, or otherwise, to change the assessment so as to reduce or increase it to the true value of the property, or to cause the taxes to be charged to the purchaser thereof; and in case of the reduction or increase of any assessment, the same shall be certified by the clerk of the board of supervisors to the auditor.

FILE COPY

MAR 25 1929
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

NUMBER [redacted]IGINAL 6

IN EQUITY.

THE STATE OF LOUISIANA,
Complainant,

Vs.

THE STATE OF MISSISSIPPI,
Defendant.

REPLY TO SUPPLEMENTAL BRIEF.

RUSH H. KNOX,
Attorney General of Mississippi,
PAT HENRY,
RUFUS CREEKMORE,
ELMER C. SHARP,
HIRAM H. CREEKMORE,
Solicitors for the State of Mississippi.

IN THE

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OCTOBER TERM, 1928.

NUMBER 9, ORIGINAL.

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SYLLABUS

1. Long acquiescence in the location of a particular boundary line, and the exercise of acts of dominion, sovereignty and control over the territory within it, is conclusive as between states.

Indiana Vs. Kentucky, 136 U. S. 1; 34 L. ed. 329.
Louisiana Vs. Mississippi, 202 U. S. 1; 50 L. ed. 913.
Michigan Vs. Wisconsin, 270 U. S. 295; 70 L. ed. 595.
New Mexico Vs. Texas, 275 U. S. 281; 72 L. ed. 280

2. The manner or method employed by a state in exercising dominion, sovereignty and control over a particular territory must be determined by the facts in each particular case, and with due regard to the physical characteristics of the disputed territory. Actually physical possession or occupation is not essential.

Louisiana Vs. Mississippi 202 U. S. 1, 50 L. ed. 913.
Michigan Vs. Wisconsin. 270 U. S. 295, 70 L. ed. 595.

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THE STATE OF LOUISIANA,
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THE STATE OF MISSISSIPPI,
Defendant.

REPLY TO SUPPLEMENTAL BRIEF.

I.

THE PLEADINGS

The first proposition which counsel argue in their second supplemental brief is that the pleadings in this case are insufficient to allege the defense that Mississippi has been exercising acts of sovereignty and dominion over the territory here in dispute, and that Louisiana has acquiesced therein.

Subdivision 6 of the original bill of complaint in this cause alleges:

> "That the State of Mississippi is claiming that the present boundary line between it and the State of Louisiana is approximately the same as it was in 1823, as shown by maps attached hereto and marked "Exhibits "A" and "B", and are claiming as Mississippi territory approximately all of

the lands east of said line of 1823, which claim is without foundation in fact or law,

"That the said State of Mississippi has sold lands east of said line and west of the channel of the Mississippi as it existed at the time of said avulsion of 1912 and 1913, and has issued patents therefor, as shown by certified copies of forfeited land patents Numbers 15644, 15554, 15555, 15556, 15557, 15558, 15559, 15660, 15576, 15792, made by R. D. Moore, Land Commissioner of the State of Mississippi, contained in four sheets attached together, made part hereof by reference, and marked "Exhibit K."

"That the sheriff and Tax Collector of Issaquena County, Miss., sold to the State of Mississippi on the 1st of March, 1897, for delinquent taxes for the year 1896, as shown on three sheets attached together, being certified copies made by R. D. Moore, Land Commissioner of the State of Mississippi, made part hereof by reference and marked 'Exhibit L.' "

Subsection 6 of the answer to the original bill reads as follows:

"It is admitted that the State of Mississippi claims that the present boundary line between it and the State of Louisiana is approximately the same as it was in 1823, as shown by maps marked 'Exhibit A' and 'Exhibit B' to the original Bill, and it is true that all of the lands east of said line shown on said maps are claimed as Mississippi territory. But it is denied that such claim is without foundation in fact or law. The facts are that the territory in dispute has been territory of the State of Mississippi from its organization as a State in 1817 to the present time, the said land being surveyed by surveyors of the United States of America in the year 1823, platted as a part of the State of Mississippi and sold by the United

States of America as lying within the State of Mississippi. At all times since 1817 said lands have been claimed by the State of Mississippi; have been assessed with taxes by the State of Mississippi: and the owners thereof have at all times recognized the sovereignty of the State of Mississippi thereto. And the said land has never been assessed for taxes in the State of Louisiana, nor until a short time before the bringing of this suit did the State of Louisiana make any claim to said land at any time, as this defendant is informed and believes.

"It is admitted that the State of Mississippi has sold land East of the boundary line as it existed in 1823 and west of the line claimed by the Complainant to be the channel of the Mississippi River as it existed at the time of the alleged avulsion of 1912 and 1913 and patents have issued for said land as alleged in the original Bill.

"It is admitted that the Tax Collector of Issaquena County, Mississippi, sold to the State of Mississippi for delinquent taxes the lands described in Exhibit L to the original Bill of Complaint.

"It is denied that all or any of said land is Louisiana territory and it is denied that the action of the State of Mississippi and its officials in selling said land and issuing patents therefor, is illegal, null and void, nor is such action an attempt to appropriate territory belonging to the State of Louisiana.

"It is denied that the sovereignty of the State of Louisiana has been infringed by the State of Mississippi, but since the State of Louisiana, by this suit, has claimed the said land, it is true that it is now necessary that the boundary between said states at this point be determined."

Issue having thus been so sharply drawn by the

pleadings, it is deemed that nothing further need be said with reference to this proposition.

II.

Defendant's Contention

Counsel in their brief state that the question for decision on this issue is:

> "Did Mississippi take possession and control of this accretion, with the acquiescence of Louisiana?"

Stating the same proposition in slightly different words, counsel for complainant say that the contention of the defendant is:

> "That Louisiana territory can be acquired by an assessment and sale in Mississippi without the alleged purchaser taking possession and without any knowledge of such assessment, or sale by Louisiana, or its citizens."

The court will observe from this statement that counsel for the complainant have assumed the very fact which is in issue, viz:, that this disputed territory is an accretion, and that it belongs to Louisiana. Their whole argument apparently is based on the assumption of these facts. That this is true is most clearly manifested by the citation in their brief of a certain section of the Louisiana Civil Code, and a Louisiana case construing it, which holds that:

> "Actual notice of any record affecting real estate, where that record is not in the Parish where the land is located, is not legal or binding notice."

This statute and the case construing it would be applicable if it were admitted that the land in question is actually located in and is a part of the State of Louisiana, and if this suit was a suit between individuals instead of states. But here the suit is not between individuals and it is not admitted that the territory in question is actually a part of the State of Lou-

isiana: that being the very question which this court has before it for determination.

In dealing with this proposition, counsel for the defendant will not assume as a fact that the disputed territory is a part of Louisiana, as do counsel for complainant, nor will it be approached upon the assumption that the disputed territory is actually a part of the State of Mississippi, although defendant's testimony establishes such fact. On the contrary, in this brief this proposition will be treated upon the assumption that the court is in doubt as to whether the disputed territory is actually Louisiana territory, or Mississippi territory, and that with such doubt in its mind, evidence of facts relative to the exercise of acts of dominion, sovereignty and control over the disputed territory by one state and acquiescence therein by the other state will be of aid to the court in determining which state is the true owner thereof.

III.

Evidence of Acts of Sovereignty and Dominion.
A—By Complainant.

Counsel in their brief cite the court to certain portions of the record in the effort to show that Louisiana claimed the disputed territory and actually occupied it while Mississippi made no claim thereto. An examination of the testimony cited shows it to be negligible and of little value in so far as giving support to the contention of complainant is concerned.

An analysis of this testimony shows:

George R. Newman, Ernest Newman and their uncle, J. B. Beard, testified that they never heard of Mississippi claiming the land.

Ernest Newman testified that the land was considered to belong to his father and that he paid his taxes in Louisiana.

The record shows that although Newman paid taxes in Louisiana on Willow Point Plantation, yet he never

returned the property here in question to the taxing authorities of Louisiana for taxation, it never appeared on the tax rolls of East Carroll Parish, Louisiana, and taxes were never paid on it by him, nor anyone else, who claimed under the Louisiana title.

"Q. Have you seen the map showing or disclosing the property which the State of Louisiana claims in this case accreted to Willow Point Plantation?

A. Yes, sir.

Q. This map shows Willow Point Plantation as Lots 6, 7 and 8 on the Louisiana side, does it not?

A. Yes, sir.

Q. That is Exhibit J. It shows the Newman tow head going out here in a general northeast direction for five or six miles?

A. Yes, sir.

Q. Now, there is more than five thousand acres of land in this map, is there not?

A. Yes, sir; I would judge there would be.

Q. Now then, did the State of Lousiana, or your father, or anybody who ever owned this property at any time ever assess themselves with the 5,000 acres of land shown here on this Newman tow head, Exhibit J, for taxes on it?

A. Well, I hardly think so." R. p. 59.

Newman also testified that his father ran cattle on the tow head and had a cattle range there.

This testimony may be true, but it is no evidence that Newman claimed the land as his own. On the contrary, as has been demonstrated above, his whole course of conduct refutes any such theory. The most that can be said is that he was using this wild, open and unoccupied land as a pasture and range for his cattle. It is also significant to note that when the

Newman heirs conveyed Willow Point plantation in 1907 or 1908, they conveyed only the plantation itself, describing its acreage and making no attempt to convey the tow head or any part of the property here in question. R. p. 78.

In their brief, counsel make much of the fact that defense witness, Lawrence Towns, testified that he had a lease on the tow head from Mr. Learned, the claimant under the Louisiana title. In considering this testimony, it should be kept in mind that Towns is an ignorant negro who is unable to read or write, and knew nothing whatsoever about what was contained in his lease.

His testimony, however, does show that he is thoroughly familiar with all this territory:—Scruggs Island, Hopkins Island, Willow Point and Newman's tow head. He knew the territory in question as "Scruggs Island," and as being Mississippi territory. R. p. 238 and 239. Newman's tow head was on the other side of the river and it was known as Louisiana territory. R. p. 237.

"Q. On which side of the river is the property you know as Newman's Tow Head? On the Lousiana side or the Mississippi side?

A. On the Louisiana side.

Q. That is the present river?

A. Yes, sir.

Q. Did you ever know, or call the island on which you had your hogs, by the name of Newman's Tow Head? Did you ever call it that or not?

A. No, sir." R. p. 237.

* * * *

"Q. What is the land over there where you pointed out the lake and where those big trees were measured—what do you call that?

A. I calls it—I would call it Mississippi."

* * * *

"Q. What do you call that where you put your hogs?

A. What do I call that?

Q. Yes?

A. I just call it an island.

Q. Is that the island you refer to as Scruggs' Island?

A. Yes, sir." R. p. 238.

With reference to the lease of Learned to Towns, the record shows that the witness had two leases, one from Captain Reed and one from Mr. Learned. Some of this land was in Issaquena County, and some of it was the island or tow head.

"Q. You also leased some land from Mr. Learned in Issaquena County, on the Mississippi main shore, did you?

A. I leased his land, Mr. Learned, down in Issaquena county. That is what Mr. Charles Henry told me when he came up there for Capt. Reed.

Redirect Examination

By Mr. Butler:

Q. That land on this side of the river is called Scruggs' Island, and the land on the other side of the river is called Newman's Tow Head—was it both sides of the river?

A. Yes, sir; this same lease. That is what he told me by word of mouth, to keep everybody off of it." R. p. 241.

The record also shows that the first lease made by the witness was from Captain Reed. That pursuant to this lease, the negro went on to the island for the purpose of homesteading it; planted corn and turnips on it and raised hogs there. He paid as rental on this

place to Captain Reed, one dollar per year. After this lease had been made, and after the witness had come upon the land, had planted his corn and raised his hogs, Mr. Learned had a survey made, "all the way round from Chotard to Arcadia," and then he (Towns) had to make a second lease. He understood this to be another lease of the same land he had rented from Capt. Reed. It was this second lease which was offered in evidence by the complainants. The record at pages 224 and 239 with reference to these matters shows the following:

"Q. You say there is an island called Scruggs' Island?

A. Yes, sir.

Q. Did you lease that island, or a part of it from Mr. Learned?

A. I leased it from Mr. Capt. Reed. He brought the lease to me.

Q. For that island?

A. Yes, sir.

Q. All the same, the island you call Scruggs' Island is the one you leased from Mr. Learned as the Newman Tow Head?

A. Yes, sir; I thought that is what it was when he came to me.

Q. Was it not exactly the same property?

A. Yes, sir; just the same ground down there?

Q. Yes; regardless of its name?

A. Yes, sir." R. p. 239.

* * * *

"The paper I handed you? It is a lease of Mr. Learned and Capt. Reed. They leased me that island. I went over there on that island and tried to homestead it for a home, and I met some people and they told me that I could not home-

stead it, and there was no land in this country no more, and so shortly after, a few years after, Capt. Reed, the sheriff of Adams County, he came down there and came up there and had me to have that lease made out. I had another one. That is the second one that he gave me. He had it made out. I had to sign it up. I was on his island. I have another lease at home in my trunk. He told me that he would lease it to me and I said to him, 'Captain, what will the lease be,' and he said not over a dollar, and I said, let me have it for five years, then. I found out that I could not get it and it was no use for me to try and get in there, and after I found out that I could not get it I just leased it from him for a dollar a year, and I went to the Justice of the Peace office and signed it up. I had some hogs and things up there, and got to doing pretty good in there. Well, they come out there Mr. Learned and Capt. Reed and surveyed all around out there, all the way around from Chotard to Arcadia—do you want me to tell you all that I know about that?'' R. p. 224 and 225.

The court will observe that Towns knew the property in question as Mississippi territory, went into possession of it under a lease from Capt. Reed the sheriff of Adams County, Mississippi, and raised his hogs, planted turnips, etc. Thereafter Mr. Learned had him to sign the second lease. He didn't know what the lease said nor how it read. He only knew that the land was Scruggs' Island, Mississippi territory, and that he had leased it. It is manifest that this testimony does not support the contention of complainant, but that it shows the witness knew the land in question to be Mississippi territory and recognized it as such.

This is the only testimony to which counsel for complainant refer as showing that the State of Louisiana, or its citizens, considered this property to belong to it rather than to Mississippi.

B—By Defendant

Let us now review the testimony offered by the State of Mississippi showing that it asserted and exercised acts of sovereignty, dominion and control over the territory and that Louisiana acquiesced therein.

It is undisputed in the record and expressly admitted by counsel in their brief that at all times prior to the years 1890-1893 (during which time complainant says Island 98 washed away) the State of Mississippi owned territory in the identical location as that here in dispute, and with the acquiescence of the State of Louisiana, exercised all the acts of sovereignty that a state customarily exercises over its territory by assessing it for taxation, selling it for the nonpayment of taxes and otherwise dealing with it as its own.

With reference to Mississippi's actions in this regard subsequent to 1890-1893, the record shows:

Defendant's witness, C. F. Hume, has been familiar with the territory in question since 1896. He always heard it spoken of as Scruggs' Island or Island 98.

"Q. You spoke of this Island 98. When did you first hear of it being called Island 98?

A. When I went up in the Delta in '96.

Q. Who did you hear call it that?

A. Every one that spoke of it called it by that name. They would call it Scruggs' Island, some would.

Q. Called it Scruggs' Island?

A. Some did; yes, sir." R. p. 206.

At this time this territory was connected to the Louisiana shore by what defendant claims to be the filled up river bed of 1882. R. p. 207.

Defendant's witness, William Miller, testified that he always understood this territory to belong to Mississippi.

"Q. Prior to that cut off did you understand that the land on the channel side of the river—that the island was on Mississippi territory? I mean while the channel was west of the island?

A. Yes, sir.

Q. Before the cut off?

A. Yes, sir.

Q. I will change my question. While the channel was west of Island 98, and prior to the cut off, did you understand that the—and while the channel ran between Island 98 and the land west of there on the other side of the Mississippi river, did you understand that the island was Mississippi territory, and that the land on the other side was Louisiana territory?

BY MR. SHARP:

We object to that as incompetent, irrelevant and immaterial. It calls for his understanding, and he has no knowledge of the title of that land. I just want to get the objection in the record.

BY THE COMMISSIONER:

Q. Go ahead and answer the question..

BY MR. BRANDON:

Q. Go ahead and answer the question? Do you know whether it was in Mississippi or Louisiana?

A. Mississippi is my idea." R. P. (Folio) 519 and 520.

IV.

The Exhibits

In order to show the exercise of acts of ownership, sovereignty and control by the State of Mississippi over the land here in question, the defendant introduced its exhibits, A, B, C, D, and E, and in order to show that the State of Louisiana did not exercise any acts of sovereignty or control over the disputed terri-

tory during this period of time, the defendant introduced Exhibits F, G, H, I, J, K, L, M, N, and V-2.

The record is undisputed and counsel in their brief so admit that all of this land, or land in the identical location, was, prior to the years 1890-1893, Mississippi territory; was assessed for taxation by the State of Mississippi, was sold for the non-payment of taxes, and in other ways was treated by Mississippi in the same manner as other Mississippi territory was treated or dealt with. For this reason, only that part of the exhibits which deal with the property after the years 1890-1893 will be especially stressed in this brief.

Defendant's Exhibit A is a certified copy of the land assessment rolls of Issaquena County, Mississippi, covering assessment of the land here in controversy from the years 1848-1926. During this entire period of time, and especially between the years 1882-1894, (during which period the State of Louisiana claims the island to have been washed away), and after the year 1894 up until the present time, these lands were continuously assessed for taxation and appeared on the tax rolls of that county. The assessments during this period of time showed the names of the owner of the property, its description, and the number of acres in each individual tract which was assessed. It is significant to note that the assessment rolls during this period of time show the acreage of Island 98 to vary from year to year as new assessments were made, showing thereby that the ravages of the river were considered in each instance.

Defendant's Exhibit B is a certified copy of the record of lands sold to the State of Mississippi for delinquent taxes in Issaquena County covering the territory here in question. This exhibit shows that in the years, 1869, 1879, 1880, 1881, 1888, 1891, 1895, 1897, 1898, 1900, 1901, 1902, 1906, 1907, 1912, 1915, 1922, 1923, 1924, and 1925 part of the lands here in controversy were sold by the State of Mississippi for delinquent taxes.

Exhibit C. is a certified copy of an order of the board of supervisors of Issaquena County, Mississippi, entered at the August, 1890, term acting on a petition filed by the owners of a part of the lands here in controversy. That order reduced the assessed valuation of the lands therein named reciting in said order that the assessment which had formerly been fixed on said lands was an over valuation of the same.

Exhibit D is a certified copy of the Tract Book of Issaquena County, Mississippi, showing the original entry in Issaquena County, Mississippi, of the lands here in question.

Exhibit E is a certified copy of that portion of the sectional index of Issaquena County, Mississippi covering transfers of the lands here in question.

Exhibits G, H, and I are certified copies of the assessment roll of East Carroll Parish, Louisiana, showing the assessments of Willow Point plantation for the years 1876-1926. These exhibits show that in 1876 Willow Point was assessed for taxation in East Carroll Parish, Louisiana, as belonging to Mrs. Annie E. Newman, administratrix, with the number of acres as 719. For the years 1880-1881, Willow Point was assessed for taxation by the taxing authorities of that parish with the acreage as 640. For the years 1882, 1883, and 1884 the land was assessed partly to Mrs. Annie E. Newman, and partly to Walter A. Newman, with the acreage fixed at 563. For the year 1885, Willow Point was assessed to these same parties with the acreage at 615.

For the years 1886, 1887, 1888 and 1889, the plantation was assessed to these same parties with an acreage fixed at 375. For the years 1899, 1900, 1901, 1902, 1903, 1904 and 1905 the plantation appears on the assessment rolls as belonging to the estate of W. A. Newman and is assessed as containing 259 acres, all of which is outide of the levee. For the year 1906, Willow Point Plantation is assessed as belonging to the estate of W. S. Newman and composed of 150 acres.

For the years 1907, 1908, 1909, 1910 and 1911 the property is assessed as belonging to the estate of W. A. Newman with the number of acres as 50; the assessment roll for these years showing the following:

> "Consisting 150 acres, more or less; all covered in river but 50 acres."

For the years 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925 and 1926, Willow Point plantation is assessed to Rufus F. Learned with the number of acres as 160.

Exhibit J is a certified copy of a deed from Mrs. Annie E. Newman to W. A. Newman, dated October 26th, 1882, conveying, among other lands, a half interest in Willow Point plantation. This deed contains the following description with reference to Willow Point plantation:

> "Also the East-half of said Willow Point Plantation, so as to convey herein Three Hundred (300) acres to be divided from the West-Half by a line commencing at a point at or near the center of the South boundary of Lot Number Three (3) and running due North to the Mississippi River so as to make or enclose that quantity—say three hundred (300) acres of Land. It being well understood by Vendor and Vendee that by reason of the caving of the banks of the river, the said Willow Point Plantation according to recent surveys has been reduced in quantity to Six Hundred (600) acres."

Exhibit K is a certified copy of a deed from J. W. Dunn, tax collector of East Carroll Parish, Louisiana, to J. S. Millican, dated May 12th, 1894. This deed conveyed:

> "The following described property assessed to the estate of Mrs. Annie E. Newman for the year 1893 according to the assessment rolls for said year, to-wit: Willow Point Plantation, 116 acres, being that portion of the original Willow Point Plantation fronting the Mississippi River."

Exhibit L is a certified copy of the deed from J. S. Millican to J. A. Craig, dated May 6th, 1895. This deed conveys the following described property:

> "Willow Point Plantation in said parish and state containing 116 acres more or less, being that portion of the original Willow Point Plantation fronting the Mississippi River."

Exhibit M is a certified copy of a deed from W. E. Dunn, tax collector of East Carroll Parish, to J. H. Gilfoil, Jr., and J. M. Hambley, dated June 30th, 1908. This deed was a tax collector's deed evidencing the fact that Willow Point Plantation was sold for the nonpayment of taxes due for the year 1907. The deed describes the premises conveyed as being,

> "Willow Point Plantation, 116 acres, being that portion of Willow Point Plantation fronting on the Mississippi River."

Exhibit N is a certified copy of a Power of Attorney, dated March 26th, 1912, appointing C. S. Wiley as agent and attorney in fact for Rufus F. Learned and Andrew B. Learned and their wives to accept in their name a certain deed conveying to them Willow Point Plantation. This power of attorney describes the lands to be conveyed as follows:

> "East-Half of the Willow Point Plantation situated in the Parish of East Carroll, State of Louisiana, said Willow Point Plantation having been composed of the East-Half of Lot or Fractional Section No. Two (2) and the whole of Lots or Fractional Sections Nos. Three, Four, Five and Six all in Township Nineteen, North, Range Fourteen, East, said E ½ thereof being the same portion of the original Willow Point Plantation which was conveyed to W. A. Newman, Sr., by his mother, Mrs. Ann E. Newman by act of giving in payment and partition dated October 26th, 1882, and recorded in Conveyance Book "Q" page 44, of the records of East Carroll Parish, Louisiana, and

which is supposed to contain One Hundred and Sixteen (116) Acres of land, all located on the river side of the Mississippi River Levee."

Exhibit N also contains a certified copy of a deed, dated April 29th, 1912, from George R. Newman, Ernest Newman and Mrs. Florence B. Newman to Rufus F. Learned and Andrew B. Learned, conveying the East-half of Willow Point Plantation and describing it as follows:

"which plantation was composed of the East-Half of Lot or Fractional Section No. Two (2) and of the whole of Lots of Fractional Sections Nos. Three, four, five and six all in Township Nineteen (19) North, Range Fourteen (14) East, said East-Half thereof being the same portion of said original Willow Point which was conveyed to said Walter A. Newman, Sr., by his Mother, Mrs. Ann E. Newman by acts of giving in payment and partition dated October 26, 1882, and recorded in Conveyance Book "Q" page 441 of the records of East Carroll Parish, Louisiana, it being understood by the parties hereto that most of the East-Half of said plantation acquired by said Walter A. Newman, Sr., as aforesaid has caved into the Mississippi River since said date and that the present acreage of said East-Half of said plantation is in nowise warranted; but is supposed and estimated to be only about One Hundred and Sixteen acres of land, all located on the river side of the Mississippi River Levee."

Defendant's exhibit V-2 is a certified copy of a map of East Carroll Parish, Louisiana, made by Thomas F. Montgomery, under the direction of the board of police of East Carroll Parish and copyrighted on the 1st day of November, 1904. This map, adopted and used by the authorities of that parish as its official map, does not include thereon as a part of that parish any of the lands which are here in question.

ARGUMENT

In dealing with the proposition here under consideration, the court must bear in mind that the manner by which a state exercises sovereignty and dominion over a particular territory or tract of land is governed in large manner by the physical characteristics of the land or territory and by its fitness or adaptability for actual possession, cultivation or settlement. The territory which is here in dispute is low, alluvial lands along the Mississippi River, subject to overflow at all times when the river rises, and unprotected in any manner whatsoever by levees or dikes. For these reasons, the land is not fitted for cultivation or settlement except in the most haphazard manner, but has grown up in cotton wood and willow timber.

It is undisputed that prior the years 1890-1893 this territory belonged to Mississippi and was so recognized by Louisiana. During this period of time Mississippi, as shown by the record, exercised acts of possession, sovereignty and control over these lands. This evidence was furnished by showing that Mississippi assessed the lands for taxation and sold them for the nonpayment of taxes. The record also shows that subsequent to the years 1890-1893, Mississippi assessed these same lands for taxation, sold them for the nonpayment of taxes and dealt with them as her own. So far as this record discloses, there has been no change either by Mississippi or Louisiana since the years 1890-1893, in the method or manner in which each of them dealt with these lands, nor has there been any change by the individuals who owned Willow Point on the Louisiana side of the river, or Island 98 on the Mississippi side of the river with reference to their manner of dealing with or considering these lands.

The laws of Mississippi with reference to the assessment of lands provide that the roll shall be made up by the owner of the property giving in to the assessor, under oath, the lands owned by him. The duty is then

imposed upon the tax assessor to see that all of the land in his county appears on the assessment roll and a final duty is imposed upon the board of supervisors to carefully examine the roll for the purpose of seeing that all of the property in the county subject to taxation is embraced therein. See pages 73 to 74 and 81 to 84 of defendant's original brief, and authorities there cited.

The Louisiana law provides that it is the duty of each taxpayer to fill out a list of his property in accordance with forms to be furnished to him and to make oath thereto. It is also provided that the tax assessor shall personally visit each person who owns taxable property to see that the tax list is filled out properly, and that the property is assessed at its actual cash value. It is also provided that the tax assessor shall place upon the assessment list all property within the state subject to taxation and if he intentionally or negligently omits therefrom any taxable property, then he shall be liable for the taxes due on the property so omitted. For full text of these statutes see appendix, pages 36—

It is, therefore, seen that the Mississippi and Louisiana laws with reference to the assessment of lands for taxation are very similar. In each case, the owner of the property makes a list under oath of the property owned by him and turns the same in to the tax assessor. In each case, the tax assessor has the authority, and it is his duty, if any property is left off the roll, to assess the same himself.

The record here shows that these lands were assessed by the tax assessor of Issaquena County, Mississippi, and taxes were paid thereon by the owner, or where default was made in the payment of the tax, the lands were sold. The record shows that these lands were not assessed by the State of Louisiana, either by the owners of Willow Point listing them, or by the assessor placing them upon the roll, and this even though the law made it mandatory upon the

owners thereof, if they claimed the same to be in Louisiana, to list them as taxable property under the laws of the State of Louisiana, and if they failed so to list them, then it was the duty of the tax assessor to place them upon the assessment roll, if he considered them to belong to Louisiana.

Counsel in their brief attempt to explain these facts by saying that this territory was an accretion to Louisiana, and that under the Louisiana law, accretions are not usually assessed unless they are sold. This attempted explanation is fallacious for two reasons. In the first place, such argument assumes that the disputed territory is an accretion to Willow Point in Louisiana, and, therefore, Louisiana territory.

In the second place, it is not the law in Louisiana that accretions are not to be assessed unless they are sold. Counsel cite no authority to support this statement, and there is none. Article 230 of the Constitution of the State of Louisiana provides that certain property, and no other, shall be exempt from taxation. Accretions to land lying on the Mississippi River, or other bodies of water, are not among those things which are exempted from taxation by the Constitution, nor are they exempted by any statute of the State of Louisiana. The sections of the Louisiana Code which are set forth in the appendix hereto show conclusively that this property was subject to taxation, if it was within the boundaries of the State of Louisiana, but the record shows that neither the owners of Willow Point Plantation, nor the taxing authorities of East Carroll Parish, Louisiana, ever made any attempt to return it for taxation, or to place it upon the assessment rolls of that parish.

Counsel, in their supplemental brief have nothing whatsoever to say with reference to Montgomery's map of East Carroll Parish; nor is an attempt made by them to explain why this map, as adopted by the Board of Police of that parish, in 1904, is not an acknowledgment by the authorities thereof that the ter-

ritory here in dispute was not a part of Louisiana and was not claimed by that parish as being a part of it.

In the case of Indiana vs. Kentucky, 136 U. S. 1, 34 L. Ed. 329, the court had the following to say with reference to a certain map made under the authority of Congress and introduced in evidence:

> "It appears that on March 26, 1804, Congress authorized a survey into townships, six miles square of the public lands north of the Ohio River and east of the Mississippi River. Chap. 35, 2 Stat. 277. Under this Act a survey was made of the land in the vicinity of Green River Island in the month of December, 1805, and in April, 1806, and it did not include the island within the territory north of the Ohio, but treated the bank of the bayou or channel north of the island as the bank of that river. The notes of this survey were given in evidence and show conclusively that the officers of the government at that time did not consider the tract in controversy as forming any part of the territory of Indiana, but did consider that the waters of the Ohio River running north of it made the tract now in controversy an island of the river. This survey from the time it was made has been regarded as establishing the fact that the southern boundary of Indiana lies north of the island. It is now insisted that the lines of this survey were intended merely as meander lines run for the purpose of defining the sinuosity of the bank and the means of ascertaining the quantity of land then subject to sale, and were not intended as a boundary line of the island. Conceding for the purposes of this case, that this is true, so far as related to the fixing of the precise line of low-water mark, to which the territory of Indiana extended, it does not affect the force of the survey, as evidence that the island was not included within that territory, ac-

cording to the judgment at that time of the surveying officers of the United States."

Counsel have devoted a great part of their brief to distinguishing the facts in the cases which were cited by defendant in its original brief, which cases announced the general and well settled rules of law with reference to the proposition here under consideration. Counsel have attempted to show that in the cases therein cited the territory which was in dispute was in the actual physical possession and occupancy of persons who acknowledged allegiance to one state and claimed title under it, or that the decisions in those cases were based on compacts or agreements relative to their boundaries which had previously been entered into by the states.

It is true that in a number of the cases cited the decisions of the court were based upon the fact that the states had by their own agreement previously fixed their boundaries, and that in some of the cases the territory in dispute was in the actual physical possession and occupancy of persons who claimed under titles from one of the litigant states and acknowledged allegiance to it. Even so, the principles announced by those cases are applicable to and controlling of the facts in this case.

But those cases do not state the rule to be that it is necessary for one state to be in the actual physical possession and occupancy of the disputed territory in order for these principles to apply. Nor were all of the cases cited of such nature or character; some of them dealing with disputed territory which by its very nature was incapable of being physicallly occupied in the generally accepted sense. Each case must be decided upon its own merits, and the physical characteristics of the disputed territory must in each instance be the guide of the court in passing upon the question of what facts will constitute the exercise of acts of dominion, sovereignty and control over the particular territory by one state and acquiescence therein by another.

In the case of Louisiana vs. Mississippi, 202 U. S. 1, 50 L. Ed. 913, the facts were very similar in their nature to the facts in this case. The bone of contention there was as to which state owned certain valuable oyster beds. The lands which were within the disputed territory were wild, low, and swampy; commonly known as the "Louisiana Marshes."

When Louisiana was admitted to the Union as a state in the year 1812, the enabling act gave to her all islands within three leagues of her coast. When Mississippi was admitted into the Union as a state in the year 1817, the act of admission gave to her all islands lying within six leagues of her coast. Some islands were within three leagues of the Louisiana coast and also within six leagues of the Mississippi coast. The waters containing the oyster beds and those low, swampy lands which were known as the "Louisiana Marshes" came within this disputed area, and it was the establishment of control over the waters containing these oyster beds that was the real object of the filing of the suit.

The court decided that Louisiana was the owner of this territory, basing its decision upon a number of grounds, the first of which was that inasmuch as Louisiana was admitted to the Union in the year 1812, and her boundaries then defined by the enabling act, Congress could not thereafter in the year 1817, when Mississippi was admitted to the Union as a state, take away from Louisiana and give to Mississippi any lands that had previously been given to her (Louisiana.)

Another one of the grounds for the decision of this case, however, was that Louisiana had exercised dominion and sovereignty over the disputed territory since its admission to the Union as a state, with Mississippi acquiescing therein, and, therefore, as between the two states, this was conclusive of their rights.

The facts with reference to the exercise of acts of dominion and sovereignty by Louisiana over this territory and acquiescence therein by Mississippi are very

similar to the facts in the case at bar. A number of surveys and maps made of this territory by the various branches of the United States Government showed it to belong to Louisiana. The lands were assessed for taxation by the taxing authorities of Louisiana, taxes were paid to that state, and it exercised political and police control and jurisdiction over it.

On Mississippi's part, a number of the official maps of the State of Mississippi showed the land as without the boundary of the State of Mississippi, and only one map of Mississippi, that which was issued in the year 1904 by the Railroad Commission of that state, showed these lands as a part of it.

In summarizing this evidence, the court said the following:

> "The record contains much evidence of the exercise by Louisiana of jurisdiction over the territory in dispute, and of the general recognition of it by Mississippi as belonging to Louisiana. Apparently, Louisiana had exercised complete dominion over it from 1812 with the acquiescence of Mississippi, unless the fact that the latter made a general reference to islands within 6 leagues of her shore in her Code of 1880 indicated otherwise. But the evidence fails to satisfy us that she attempted any physical possession or control until after 1900. The few instances referred to as showing that Mississippi asserted rights in the disputed area are of little weight and require no discussion."

In the case of Michigan vs. Wisconsin, 270 U. S. 295, 70 L. Ed. 595, the court dealt with the question of disputed boundaries between the two states in three different sections.

In the Menominee River section, the boundary was described in the enabling acts as being the center of the main channel of the Menominee River, and the territory in dispute was certain islands in the river.

The argument was made by Wisconsin that in the year 1850 there was an adjustment of the boundary in this section between the states of Michigan and Wisconsin, and that this adjustment of the boundary was conclusive on the parties litigant. The court declined to pass on this contention, but based its decision upon the fact that Wisconsin for more than fifty years had had the undisputed and undisturbed possession of substantially all the islands in the river in the disputed area and had exercised jurisdiction and dominion over them with the knowledge and acquiescence of Michigan.

The facts in that case with reference to the exercise of jurisdiction and sovereignty over these islands were substantially as follows: In 1840 a certain Captain Cramm made a report to Congress in which he directed attention to the fact that it was very difficult to determine the main channel of the river at all places on account of the numerous number of islands therein, and suggested that for a part of the way down the river, the boundary should follow the extreme left hand channel and for the rest of the way the extreme right hand channel, thus dividing jurisdiction over the islands between the states in that way. Thereafter the Michigan enabling act was passed. The larger islands were surveyed and platted as belonging to Wisconsin, but there were numerous small islands in the area which were never surveyed, nor platted, and as to which there were no specific or definite acts of dominion exercised by either state. The court held that this evidence showed acts of jurisdiction and sovereignty by Wisconsin over the disputed territory and Michigan's acquiescence therein, sufficient to support the contention of Wisconsin.

In the Green Bay section the boundary was described as being "the center of the most usual ship channel." There were two distinct ship channels and the question for determination was which of these two channels was meant. The court decided that Wisconsin had exercised dominion and sovereignty over the

islands in the disputed territory, that Michigan had acquiesced therein, and, therefore, the claim of Wisconsin was supported.

With reference to the evidence showing acts of dominion and sovereignty by Wisconsin and acquiescence therein by Michigan, the court said the following:

> "The evidence in respect of the other group of islands, while perhaps not so complete, is definite and clear to the same effect. The taxation of lands on Chambers Island began while Wisconsin was still a territory. In 1861, voters on that island participated in a Wisconsin election. A history of Door county, introduced by complainant, recites that the island constituted an organized town forming a part of Door county, Wisconsin, as early as 1867. Evidence of early and continued recognition and treatment of the island as a part of Wisconsin by the United States through its surveys, etc., is to the same effect as that in respect of the other group. And the evidence is likewise the same in respect of the uniform appearance of Chambers Island and the other small islands of the group upon the old maps as a part of Wisconsin, and their absence from Michigan surveys and maps. The absence of evidence of specific acts of dominion over the Strawberry and the other small islands of this group is easily understood and does not affect the result. They are of little consequence, lying well within the boundary as claimed by Wisconsin, easterly from Chambers island and near the westerly shore of the Door county peninsula. They appear on all maps as, and have never been regarded or treated otherwise than, a part of Door county. It is impossible to give them a status differing from that of the larger island and the peninsula, between and within the shadows of which they lie.
>
> "That Wisconsin since statehood has continuously asserted title and has exercised complete and

> exclusive dominion over all the islands of both groups is really not a serious issue. Indeed, the bill of complaint avers that Wisconsin had possessed herself of, and exercised sovereignty over, the islands, including Washington, Plum, the Strawberries, and numerous other valuable islands, and has excluded and continues to exclude the state of Michigan from her rights thereto; and, more particularly, that 'Wisconsin has for many years disregarded the true and rightful boundary . . . . and has for a long time past possessed and does now possess, and has asserted and does now assert, civil, criminal and political jurisdiction over those portions of the territory within the Michigan boundaries above described as the Montreal river section, the Menominee river section, and Green Bay section of the disputed territory aggregating approximately 255,000 acres, ... and has unlawfully taxed and still continues to unlawfully tax said property, ...' The explanation relied upon is that the state of Michigan, as a result of her excusable ignorance, has not been aware of the real facts and, therefore, should not be held to have lost rights by long acquiescence which she otherwise might have had. This view cannot be accepted and may be dismissed with a reference to what we have already said as to the same defense in respect of the Montreal river section."

In the case of New Mexico vs. Texas, 275 U. S. 281, 72 L. Ed. 280, suit was brought by New Mexico against Texas to establish a part of their common boundary in the valley of the Rio Grande River. The allegation was made in the bill, and it was admitted in the answer, that the channel of the Rio Grande as it existed in 1850, was and is the true boundary between the states. The testimony for the complainant showed the Rio Grande river to have been located in the year 1850 in one place, while the testimony for the State of Texas showed it to be located in another place. In the year

1859, John H. Clark, United States Commissioner, made a survey of a portion of the boundary line between Texas and the territories of the United States. In the year 1911, commissioners were appointed to re-establish the Clark survey. According to this survey, as re-established, the river bank of the Rio Grande of the year 1859, was substantially in the position claimed by Texas. Texas also introduced in evidence various old surveys, patents and maps which showed the river to be substantially in the position claimed by them. The court in deciding the finding of the Commissioner that the location of the river in 1859 was substantially as claimed by Texas to be correct, said the following:

> "He further found that for many years prior to the admission of New Mexico as a state in 1912, surveys were made by Texas surveyors and patents issued by Texas on substantially all the land in the area in dispute; that the occupancy and physical possession of this land by Texas patentees and persons claiming under them, had been admitted by counsel at the hearing before him; that there was no evidence that from 1850 to 1911 the United States had issued any patents specifically covering lands east of the river as located by the Salazar-Diaz survey, or conflicting with any of the patents issued by Texas; and that, for at least thirty years prior to the admission of the Territory of New Mexico as a state, the United States made no challenges of the claims to lands asserted by Texas and its citizens, and, impliedly at least, recognized the practical line that had been established as the boundary between the territory and Texas.
>
> * * * *
>
> "Upon the whole case we are satisfied that the master's finding as to the location of the river in 1850 is substantially correct, and fixes its course as accurately as is possible after the lapse of more than three quarters of a century. Without attempting to set out our reasons in detail, we con-

clude: That the testimony of the witnesses as to their recollection of the old river is far from satisfactory, and does not in view of the other evidence in the case, sustain the burden of proof resting upon New Mexico; that the greater weight of the evidence shows that Clark's monument No. 1 did not coincide with station 1, but was located at least 2783 feet west thereof, substantially as re-established by the Scott-Cockrell Commission; that under the Joint Resolution of February, and August, 1911, preceding and conditioning the admission of New Mexico as a state, it is bound by the re-establishment of the monument by the commission and cannot question its accuracy; that this necessarily extends the Clark boundary line along the 32d. parallel to the east bank of the river, at a point 600 feet west of the re-established monument; that, according to the greater weight of the evidence, the river in 1850, or as near thereto as may now be determined, ran southwardly through the valley from the parallel, as shown by certain of the surveys, patents and maps relied on by Texas—especially the Salazar-Diaz survey of 1852, the Texas surveys of 1849 and 1860, the maps of the surveys made in 1852—1855, for the Joint Boundary Commission, and the Clark map of 1859—on the course and in the location set forth and described in the master's report; and that this conclusion is reinforced by the tacit and long-continued acquiescence of the United States, while New Mexico was a territory, in the claims of those holding the land in controversy under Texas surveys and patents, and the undisturbed possession of the Texas claimants. In short, we find New Mexico has failed to sustain the burden of proof, and that the master's report is in accord with the greater weight of the evidence."

CONCLUSION

From the foregoing authorities, it is evident that it is not necessary, in order for the legal principle here involved to be applicable that there be actual physical possession or occupation of the disputed territory, but that if one state exercises acts of dominion, sovereignty and control over the disputed territory, and the other state acquiesces therein, then this is conclusive as between the two. As to what is necessary to show the actual exercise of acts of dominion, sovereignty, or control over the territory by one state and acquiescence therein by the other is a matter to be determined from the facts in each particular case, giving due regard to the physical characteristics of the territory in dispute.

In this case, therefore, it is respectfully submitted that the record conclusively shows that the defendant State of Mississippi has exercised all such acts of sovereignty, dominion and control over the territory in question as were susceptible of being exercised by it over that particular territory and that complainant State of Louisiana by its acquiescence therein is now barred from making any claim thereto.

Respectfully submitted,

RUSH H. KNOX,
Attorney General of Mississippi.

RUFUS CREEKMORE,
PAT HENRY,
ELMER C. SHARP,
HIRAM H. CREEKMORE,
Solicitors for State of Mississippi.

We hereby certify that we have this day mailed, postage prepaid, a copy of the foregoing REPLY TO SUPPLEMENTAL BRIEF to Hon. Percy Saint, At-

torney of the State of Louisiana, Messrs. Dale, Dale and Dale, Attorneys-at-Law, Vidalia, Louisiana, and Messrs. Brandon and Brandon, Attorneys-at-Law, Natchez, Mississippi.

This the 23 day of March, 1929.

RUSH H. KNOX,
Attorney General of Mississippi,
RUFUS CREEKMORE,
PAT HENRY,
ELMER C. SHARP,
HIRAM H. CREEKMORE,
Solicitors for the State of Mississippi.

APPENDIX

GENERAL PROPERTY TAX, RATE OF TAXATION, ASSESSMENT, COLLECTION, ETC.

Act 170 of 1898, p. 346.

TITLE.

AN ACT to provide an annual revenue for the State of Louisiana by the levying of annual taxes upon all property not exempted from taxation and by prescribing the method of assessing and collecting the same, and of enforcing payment thereof in the several parishes of the State and setting forth the purposes for which said levy is made.

Rate of State Tax Fixed at 6¼ Mills

Section 1. (As amended by Act 281, 1914, p. 562.) Be it enacted by the General Assembly of the State of Louisiana, That for the calendar year A. D., 1914, One thousand nine hundred and fourteen, and for each

succeeding calendar year, there are hereby levied annual taxes amounting in the aggregate to six and one-fourth (6¼) mills on the dollar of the assessed valuation of all property situated within the State of Louisiana, except such as is expressly exempted from taxation by law, and the term property as herein used means and includes all real estate, with the buildings and all other improvements thereon, or thereto attached, and all other untaxed land, etc.

Duties of Assessors in Relation to the Assessment of Property

Section 7. Be it further enacted, etc., That it is made the duty of the tax assessors throughout the State to place upon the assessment list all property subject to taxation, including merchandise or stock in trade on hand at the date of listing, within their respective districts or parishes; and if any tax assessor shall intentionally or knowingly or through gross negligence omit any taxable property from the assessment list, or permit the same to be omitted therefrom, he and his sureties in solido shall be liable on his official bond for the full amount of the taxes due on the property so omitted from the list, etc.

Assessment of Land

Section 8. Be it further enacted, etc., That if the land to be assesed be a tract or a lot known by name or if the owner's name be known, it shall be designated by those particulars and by its boundaries; if it has no name or the name be unknown, it shall be designated by its boundaries, or by divisions, pursuant to the United States surveys, etc.

Examination of Records

Section 10. Be it further enacted, etc., That each tax Assessor, parish of Orleans excepted, on and after the first day of January of each year, shall diligently examine the records in the offices of mortgages and conveyances and abstracts of land entries, and compare the names of the parties assessed and the descrip-

tion of the property, giving the exact lines and measurements as so recorded in the conveyance office and the abstract of land entries, and shall otherwise make faithful inquiry and investigation to ascertain what taxable property in his district or parish belongs to residents and to absent owners, and to unknown owners; and he shall make a separate list describing each tract of land and other items of taxable property belonging to any absent owner whose name is unknown, and shall affix the valuation thereof in person or by sworn deputy, unless said absent owner, or his agent or attorney shall have delivered to him a correct and complete tax list containing the name and post office address of said absent owner and of his agent or attorney, on or before the first day of June, 1899, and each subsequent year, and he shall make a separate tax list describing each tract of land and other property belonging to each unknown owner; and shall affix a separate valuation to each separate tract; provided, that no assessor shall draw any salary until he makes affidavit and furnishes a certificate from the recorder of conveyances that he has made the examination required by this section.

Omission of Lands from Taxation.

Section 12. (As amended by Act 69, 1908, p. 84). Be it further enacted, etc., That if any tract or lot of land, or other property shall be omitted in the assessment of any year, or series of years, or in any way erroneously assessed, the same, when discovered, shall be assessed by the assessor, or tax collector for the whole period of which the same may have been omitted or improperly assessed and shall be subject to the State, parish, municipal and levee taxes, which have been, or may hereafter be assesesd against said property in accordance with law, etc.

Return of Lists by Taxpayer

Section 14. Be it further enacted, etc., That it shall be the duty of each taxpayer, parish of Orleans excepted, to fill out a list of his property in accordance with

the form provided in section 17, of this act; and he shall make oath thereto before the tax assessor, or any officer authorized by law to administer oaths, and return the same to the assessor before the first day of May of each and every year, and any refusal, neglect or failure from any cause whatsoever, to comply with this provision of this act, shall act as estopping the taxpayer from contesting the correctness of the assessment list filed by the assessor.

Oath of Taxpayer

Section 15. Be it further enacted, etc., That on the back of each of said tax lists there shall be printed in substance the following form of oath or affirmation, to-wit: "I, whose postoffice is....., do solemnly swear (or affirm) that the list on the reverse side of this paper which I have signed, is a correct and complete list of all the property of which I am owner or have in my possession, or under my control, in the capacity set forth in said list, situated in the parish of .....; of every kind, character and description, which is subject to taxation under the Constitution of the State of Louisiana, and under Section 1, of the act of the General Assembly, entitled an act to provide an annual revenue and taxation for the State of Louisiana, etc., and adopted at the regular session of 1898, which section is printed in full in this page; and further, that the number of acres of land has been stated and that the valuation placed thereon by me is true and correct to the best of my knowledge and judgment, and I have given the proper description of said lands and all other taxable property as the law requires, so help me God. Sworn to and subscribed before me this.....day of....., A. D., ..."

Assessors to Personally Visit Taxpayers

Section 16. Be it further enacted, etc., That the said assessor shall in person, or by duly authorized deputy, visit the domicile, residence, or office, of each person, company, firm, corporation, bank, exchange or association of two or more individuals and shall fill out with

the name and postoffice address the said list as provided for in this act which each person who owns, possesses or controls any taxable property in his own right, shall sign and swear to, and a separate list shall be filled out with the name and post office, and shall be signed and sworn to by each person, in each separate capacity in which he may possess taxable property, such as cashier, president, treasurer, secretary, liquidator, master superintendent, manager, sequestrator, receiver, keeper, curator, tutor, agent usufructuary, and every other representative or official capacity.

Preparation of List.

Section 19. Bt it further enacted, etc., That the Tax assessors shall fill up the column for valuation with such valuation of each item of property as he considers just; whenever he does not agree with the valuation as fixed by the taxpayer, and if any person shall fail or refuse to sign one of the said tax lists within the time prescribed in Section 14, of this act, the tax assessor shall obtain his name, ward and postoffice address, and in cities and towns, street, number and postoffice address, and a full description and valuation of all the property of said person in whatever way he can, and shall himself fill out said list from the best information he can obtain, and shall fill up the column with his own valuations; and to that end he is authorized to administer oaths and propound questions to any person whom he supposes can give information in relation thereto. In making all assessments it shall be the duty of the assessor to describe all property according to such a description as will reasonably identify the property assessed and to assess the same in the name of the owner, except in the case of unknown owners, and it is hereby made his special duty to examine into assessments that have been carried over on the rolls from year to year without having been given in by the owners, and to that end he shall make all necessary inquiries as to the facts from any and all sources, and as to the law from the district

attorney, whose duty it is to advise him in all such cases.

Assessment at Cash Value

Section 20. Be it further enacted, etc., That all real estate and personal property subject to taxation, as enumerated by Section 1 of this act, and not exempt by law, shall be estimated by the assessors of the several parishes of the State, parish of Orleans excepted, at its actual cash value upon the blank lists furnished by the Auditor of Public Accounts, in accordance with this act; and in case the valuation so made by the said assessors are, in the opinion and belief of the taxpayer, in excess of and beyond the cash value of the personal or real property, the said assessor shall make or cause to be made a duplicate list of said property, and shall then and there administer to the said taxpayer the oath or affirmation as follows, viz: "I swear, or affirm, that the valuation affixed opposite each item of property in the foregoing list is the actual cash value thereof, according to the best of my knowledge, judgment and belief, so help me God. Sworn to and subscribed before me this.....day of..... A. F. 18....." The assessor shall subscribe such duplicate lists and submit them to the board of reviewers as hereinafter provided for.

FILE COPY

MAY 2 1930

IN THE

Supreme Court of the United States

October Term, 1928.

Number [redacted] Original. 86

In Equity.

THE STATE OF LOUISIANA,

Complainant,

vs.

THE STATE OF MISSISSIPPI,

Defendant.

REPORT OF SPECIAL MASTER.

IN THE

Supreme Court of the United States

October Term, 1928.

Number 9, Original.
In Equity.

THE STATE OF LOUISIANA,
Complainant,

vs.

THE STATE OF MISSISSIPPI,
Defendant.

REPORT OF SPECIAL MASTER.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The report of Thomas G. Haight, as Special Master in the above entitled cause, respectfully shows as follows:

By order entered herein at the October Term, 1928, this case was referred to me, as Special Master, with direction and authority to report the same to this Court with my findings of fact, my conclusions of law and my recommendations for a decree herein.

Pursuant to said order, counsel for the respective parties appeared before me at New Orleans, and there entered into a stipulation correcting certain testimony

theretofore taken, and covering such additional evidence and exhibits as they desired to introduce. At that time and place counsel submitted to me the testimony theretofore taken, together with their briefs, and argued the case orally.

All the testimony in the case was taken by a Commissioner before the reference was made to me. Therefore, I did not have the advantage of seeing the witnesses, hearing their testimony and noting its application when and as given to the numerous exhibits in evidence. This has made much more difficult the examination, analysis and interpretation of the testimony and exhibits, and reaching conclusions therefrom. Some of the testimony is apparently irreconcilable but a close analysis of it all leaves no reasonable doubt as to the ultimate facts. There are no disputed questions of law, although the applicability of one settled rule of law to the situation, as outlined by the evidence, is in controversy. For the convenience of the Court, I have recited the testimony both documentary and oral quite in detail.

Nature of Suit and Contentions of the Parties.

This suit is brought to locate and establish by the decree of this Court, that part of the boundary line between the States of Louisiana and Mississippi which separates Willow Point and adjacent premises in Louisiana from Township 9 North, Range 8 West in Mississippi.

Surveys made by the Mississippi River Commission in 1823 and 1824 are accepted as correctly locating the river and the shoreline of the State at the date of these surveys respectively.

The parties agree that the middle line of the navigable channel of the river at the respective dates of these surveys was then the true boundary line, and that at these dates the territory now in dispute was within the boundaries of Mississippi.

In 1823-24 the premises in controversy were known as Tullos (or Tulles) Island, and certain parts of the Mississippi mainland adjacent thereto. Prior to 1882, this island was renamed "Island No. 98". The bend in the river at the place in question is known as Albemarle Bend.

The State of Louisiana contends:

1. That between the dates of the surveys made by the Mississippi River Commission in 1823 and 1824 and the survey made by the Commission in 1912 and 1913, erosions took place on the Mississippi shore of the river and accretions attached to the Louisiana shore; that thereby the location of the river, and hence of the boundary line, was gradually and imperceptibly moved in an easterly and northeasterly direction a distance of five or six miles, and that these accretions to the Louisiana shore became Louisiana territory.

2. That in 1912-1913 the river suddenly changed its course, cut across the bar formed by the accretions to the Louisiana shore, and thereby the navigable channel of the river was suddenly changed to the location shown by the survey made in 1912-13 (Complainant's Exhibit F); but that this change, being by avulsion, the boundary line remained and now is where the extreme northeasterly and easterly mid-channel of the river around the Albermarle Bend was prior to the avulsion.

The State of Mississippi disputes complainant's contentions and claims:

1. That the burden is on the complainant to prove that the Mississippi River gradually moved northeasterly and easterly from its 1823 channel to its 1882 channel, and that the Louisiana shoreline progressively followed it by accretions; that Louisiana has failed to bear this burden, and by reason thereof it has failed to show title to accretions which admittedly attached to the westerly shore of the river subsequent to 1882.

2. That subsequent to 1882 the river above and to the west of Willow Point cut into the Louisiana shore and thereby deflected the current from a southeasterly to a northeasterly direction; that the river, thus deflected, cut around the head and to the north and east of what was then left of Tullos Island, enlarged what is known as the "chute" between that Island and the Mississippi mainland, making a new channel there; that the old bed of the river to the west of Tullos Island filled up, and thereby that island became attached to the Louisiana shore; that the river continued to cave the Mississippi shore east of Tullos Island and added to that Island by accretions until 1912-1913, when it suddenly abandoned its new channel and returned to the old 1882 channel, and thereby what theretofore had been Tullos Island again became an island, but greatly enlarged by accretions thereto.

3. If defeated in these contentions, Mississippi claims that its title to the disputed territory has become unassailable by reason of its long continued possession of, and its exercise of sovereignty and dominion over the same, with acquiescence therein by Louisiana.

The claim of Mississippi is that all territory east of the mid-channel of the river, as shown by the 1823 survey, is Mississippi territory. Failing in that contention, defendant claims that complainant has failed to prove that the change in the river channel between 1882 and 1894 was due to erosion on the Mississippi shore and accretions to the Louisiana shore, and not by avulsion, and hence the boundary line between the States should be decreed to be the middle of the navigable channel as it existed in 1882.

It is undisputed that between 1823 and 1913 the location of the Mississippi River at the place in question had changed from that shown by the surveys in 1823 and 1824 to a location five or six miles northeasterly and easterly therefrom, the latter location being shown by a survey of the Mississippi River Commission made in 1912-1913 (Complainant's Exhibit F; Defendant's Exhibit 6-D). That survey shows the channel of the river both before and after the cut-off of those years.

Was this change of the river channel to its extreme northeasterly and easterly position produced gradually by erosions on the Mississippi shore and accretions to the Louisiana shore, or was it, or some part of it, due to one or more avulsions? If produced by erosions on the Mississippi shore and accretions to the Louisiana shore, the disputed territory clearly belongs to Louisiana. But to the extent, if any, that this change was the result of avulsions, the true boundary line was not thereby altered. *Iowa* v. *Nebraska,* 143 U. S. 359; *Arkansas* v. *Tennessee,* 246 U. S. 158; *Oklahoma* v. *Texas,* 260 U. S. 606. On these propositions the parties are in agreement.

Analysis of the Evidence.

No witness was produced by either side who could testify from personal observation with respect to the location of the river at any time between 1824 and 1876.

Defendant first directs attention to testimony with respect to a depression called by some of the witnesses "St. Francis Chute", said to be located a little easterly of the position of the river channel in 1824. It is claimed that this testimony shows that both banks of the channel as it existed in 1824 are now discernible, and from this it is argued that the movement of the river toward the east must have been produced by avulsion and not by erosion and accretion.

An examination of this depression as it appears on the maps referred to by defendant on page 19 of its original brief (being Complainant's Exhibit M and Exhibit F; Charts 46 and 47, Mississippi River Commission surveys), shows that it corresponds very closely as to location, direction and width to the depression shown on Complainant's Exhibit H attached to the bill of complaint, located between the Louisiana mainland and what is there designated as "High Bar". By scaling the distance on these maps, it is found that at the north end of the "High Bar" the distance from the westerly line of this depression to the Louisiana bank line of 1824 is about 1300 feet; that at the point where this depression is crossed by parallel 32° 36′ north latitude, its westerly line is about 2400 feet from the Louisiana bank line of 1824, and that at a point opposite the southerly end of Tullos Island as it existed in 1823, its westerly line is nearly seven-eighths of a mile from the Louisiana bank line of 1824. That high ground should exist on both sides

of this depression located as it is between what had been a bar and the mainland, is quite natural.

The argument that this depression is the old 1824 channel is, therefore, not persuasive.

Complainant's Exhibit G to the bill of complaint is a blue print made by Captain C. H. West, a Civil Engineer in active practice for 42 years, and a member of the Mississippi River Commission since 1910. On this blue print Captain West had combined and correlated on one sheet the 1823 survey of the Mississippi River Commission of a part of Township 9 N, Range 8 W, Issaquena County, Mississippi, and the survey of 1824 of that Commission of a part of Township 19 N, Ranges 14 and 13 E, Parish of East Carroll, Louisiana; also the Louisiana and Mississippi bank lines of the river at the date of these surveys respectively. By broken lines he shows the Louisiana bank line of the river in 1866.

It is not disputed that Complainant's Exhibit G shows correctly the Mississippi River Commission's Survey of both the Mississippi and Louisiana territory in question, and the respective bank lines of those states at the respective dates when these surveys were made; or that this exhibit shows the correct relation of these two surveys to each other.

The location of the Louisiana bank line in 1866 as shown on this blue print was at first questioned (defendant's original brief, p. 20). But by stipulation of January, 1929, a blue print of the 1866 survey of the Louisiana bank line was stipulated in evidence. By the same stipulation, two other blue prints were put in evidence; (1) a map showing the changes in the river bank and levee lines along the front of Illawanna and Villa Vista plantations in Louisiana from 1824 to 1899; and

(2) a map of Alsatia, Salem, Villa Vista and Mascot Bend. Both these blue prints show the location of the Louisiana bank line in 1866 in front of the location in question, and for a considerable distance on each side thereof.

These three blue prints, together with Complainant's Exhibit G show that beginning near the northeasterly corner of Willow Point, the Louisiana bank line of 1866 had moved easterly from the 1824 bank line to a point near its intersection with parallel 32° 36′ north latitude (opposite Section 6 on Exhibit G) where it attained its maximum easterly position, and from that point southerly it approached the bank line of 1824 down to a point slightly below parallel 32° 35′ north latitude, where it intersected the bank line of 1824. By scaling the distance between the bank lines of 1824 and 1866, it is found that at the point of maximum separation of these lines, the 1866 bank line was approximately 439 yards easterly of the 1824 bank line. This extension of the bank line towards the east is much less than the admitted width of the river in this location. This precludes the idea that the change in the position of the river between 1824 and 1866 was produced by avulsion.

The survey next in order of time is that of Hopkins Island (Complainant's Exhibit BB to the bill of complaint), made in 1869-70 by Robert Boyd, U. S. Government Surveyor, pursuant to contract and under instructions of the Surveyor General of Louisiana. This survey shows the relation of that island to Louisiana and the location of the adjacent Louisiana bank line as it then existed. The location of Hopkins Island in 1870 and of the Louisiana bank line in that vicinity at that time is sketched in broken lines on Exhibit H to complainant's

bill. The bank line thus located coincides with the bank line of 1866 at about the middle of Section 4 of Township 19 N, Range 14 E, Louisiana territory, but from that point it diverges easterly to a point about opposite the dividing line between Sections 6 and 7, thence it extends in a southwesterly direction until it coincides with the Louisiana "high bank line", as afterwards located by the survey of 1882, at a point about opposite the dividing line between Sections 7 and 8. Thence it follows that "high bank line" to the southerly side of Section 9, where it again coincides with the 1866 bank line.

Scaling on the map the divergence easterly of the 1869-70 bank line from that of 1866, it is found that the distance between these two lines varies from zero to a maximum of about 1099 yards, the maximum divergence being opposite Sections 7 and 8. This maximum divergence is little, if any, more than the average width of the river (see computation, pp. 10 and 11 of complainant's first supplemental brief). Defendant does not dispute the correctness of this computation in its reply brief.

This evidence again clearly indicates that up to 1870 the change in the location of the river was not by avulsion but by erosion and accretion.

The next survey in evidence is that made by the Mississippi River Commission in 1879-80 with river soundings taken in 1882. It is usually designated as the 1882 survey. This survey, so far as it relates to this controversy, is shown by the Commission's Charts 45 and 46 (Complainant's Exhibits EE and EEE; Defendant's Exhibits 6-C and 6-D).

Complainant's witness, Captain West, has platted these two charts on one sheet and has superimposed

thereon Complainant's Exhibit G, thereby showing the relation of the 1823 and 1824 surveys to the 1882 survey. This combination of these three surveys was introduced in evidence as Complainant's Exhibit M.

Complainant's Exhibit H also shows the river banks and bar lines of the 1882 survey and their relations to the Louisiana bank lines of the 1866 and 1869-70 surveys. This exhibit shows that the Louisiana "high bank line" of the 1882 survey coincides with its bank line of 1866 from about the middle of Section 4 of Township 19 N, Range 14 East to the middle of Section 6. At that point it diverges towards the east to about the middle of Section 8 when it again approaches the bank line of 1866 and coincides with it at about the southerly line of Section 9.

The Louisiana "bank line" of the 1882 survey as distinguished from its "high bank line" (Complainant's Exhibit H) coincides with its bank lines of 1866 and 1869-70 at about the middle of Section 4 and then diverges sharply toward the east to a maximum divergence of about three quarters of a mile opposite Section 7. From that point it approaches the "high bank line" of 1882 and coincides with it at about the southerly line of Section 9. The relative positions of the bank lines and bar lines of 1866, 1869-70 and 1882 are shown on Complainant's Exhibit H. Defendant does not dispute that the Louisiana bank and bar lines of the 1866, 1869-70 and 1882 surveys are correctly located on Complainant's Exhibit H.

The difference computed in yards between the Louisiana bank line of 1869-70 and that of 1882 at various points is shown on pages 10 and 11 of complainant's first supplemental brief. The distance between these two lines is shown to vary from zero in front of Section 4 to about

1245 yards opposite the dividing line between Sections 7 and 8. From that point southerly these lines converge until they intersect near the southerly line of Section 9. Defendant does not dispute the correctness of these computations.

The 1882 survey of the Mississippi River Commission shows the "high bar" adjacent to the Louisiana shore shown on Complainant's Exhibit H, but gives it no name. Chart 46 of the 1882 survey (Complainant's Exhibits EEE and M; Defendant's Exhibit 6-D) shows that this bar had an elevation of 100 feet and cottonwood trees were growing thereon. Tullos Island, or Island No. 98, is shown greatly reduced in size, both in length and width. When that survey was made (1879-80) that part of the island which was in existence in 1823 tapered to a point at the southerly end and almost to a point at the northerly end, being but a narrow crescent located partly in Section 21 and partly in Section 28 (see Complainant's Exhibit M). All that part of the original island located in Sections 20, 29 and 30 had disappeared, as had also a considerable portion of the part located in Sections 21 and 28.

The 1882 survey shows that at the date of that survey the Louisiana bank line had moved easterly and intersected the Mississippi bank line of 1823 in Section 20 (Tullos Island) and that its most easterly point extended nearly to the easterly line of Section 29. From that point it turned sharply to the southwest, crossed the southerly line of Section 29 at about the middle point, intersected the Mississippi mainland of 1823 at the northwest corner of Section 32 and continued across Section 31. Accretions attached to the Louisiana shore covered the southwest corner of Section 20, a large part of Section

29 and all of Section 30 within the boundaries of Tullos Island as it existed in 1823, and also portions of Sections 31 and 32 on the Mississippi mainland of 1823.

Northeasterly of the remnant of Island No. 98 which remained in 1882, a bar had formed extending northwesterly along the Mississippi mainland from which, and from the remnant of Island 98, it was separated by a chute. The southwesterly portion of this bar had an elevation of 100 feet, and willow and cottonwood trees were growing thereon.

On Complainant's Exhibit H the middle of the channel of the river in 1882 is shown as passing through Section 20, the extreme northeasterly and southeasterly corners of Section 29, and for a short distance just within the westerly edge of Section 28, on what had been Island 98, and through Sections 31 and 32 on the Mississippi mainland. The easterly bar line of the river is shown along the easterly shore of what was Hopkins Island, all or practically all of which had disappeared.

In 1882 the deep part of the current was along the bar lying northwest of Island 98 and along the westerly side of the remnant of that island. Charts 45 and 46 of the Mississippi River Commission surveys show that the westerly side of that bar and the southwesterly side of Island No. 98 were then caving.

It is admitted that in 1882 the river had changed its channel to the eastward and that at a point in front of Section 7, Louisiana territory, it was about 1½ miles easterly from the 1824 channel. (See defendant's original brief, p. 12.)

The contour lines on the bar attached to the Louisiana shore show a regular descent from an elevation of 100 feet at the "high bar" and the Louisiana mainland, to the river channel.

Therefore, without regard to the oral testimony to be hereinafter referred to, I have no difficulty in reaching the conclusion from the documentary evidence that up to 1882 the change in the location of the river and of the boundary line had been produced by erosions and accretions, not by avulsions.

The next general survey of the river and adjacent banks in the location of the disputed territory is known as the 1894 survey of the Mississippi River Commission. This was a low water hydrographic survey. Elevations were taken of the lands between the river banks and soundings were taken in the channel. This survey, with land elevations between the river banks, river soundings and certain other data, was platted on work sheets kept in the office of the Commission, but these sheets were not published.

The Commission platted the bank and bar lines of the 1894 survey in light red lines, on the 1882 survey, the bank lines being solid and the bar lines broken. The map of the 1882 survey, with the bank and bar lines of the 1894 survey in red superimposed thereon, but without elevations or soundings, was republished by the Mississippi River Commission in 1900 as the second edition of the 1882 survey. An original of this second edition is annexed to complainant's bill marked Complainant's Exhibit C.

On Complainant's Exhibit C the 1894 bank line of Louisiana does not differ substantially from its bank line as shown on the 1882 survey. The bar line, however, separates from its 1882 bar line at the northeasterly corner of Willow Point and extends thence northeasterly across the river channel of 1882 to the Mississippi mainland of

that year; thence in a wide curve it crosses what in 1882 was the northwesterly portion of the then remnant of Island 98, thence to and through what was the river channel in 1882 to a point near Henderson Landing where it intersects the Louisiana bank line of 1894.

The Mississippi bank line and bar lines of 1894 meet on the Mississippi mainland northeast of Willow Point just east of meridian 91° 03′ west longitude, and from that point its bank line extends practically parallel with the Louisiana bar line, but wholly within the Mississippi mainland, to and beyond a point opposite Henderson Landing at the southerly end of Albemarle Bend.

The location of the 1894 bank and bar lines of both states as platted on the 1882 survey, clearly indicates—

(1) That by erosion, all of the remnant of Island 98 as it existed in 1882 had disappeared and that the Mississippi mainland had been cut away to its 1894 bank line.

(2) The Louisiana bank line being in substantially the same location as its 1882 bank line, there was no avulsion between 1882 and 1894.

(3) That by accretions the bar attached to the Louisiana shore had extended northeasterly and easterly to its 1894 bar line, and thereby it had covered all that part of what was formerly Mississippi territory lying westerly of said bar line. The territory so covered was a large portion of the 1882 channel of the river from the northeasterly corner of Willow Point to Henderson Landing; about one-half of the bar northwest of Island 98 as shown on the 1882 survey; a strip of Mississippi mainland adjacent to said bar; all of Tullos Island as it existed in 1823, except that part thereof lying easterly of the Louisiana bar line in the channel of the river; nearly all of Section

31 and parts of Sections 16, 17, 18, 21, 28 and 32 on the Mississippi mainland.

(4) That nearly all of the bar adjacent to the Mississippi mainland in 1882 and all of Island 98 not covered by the extension of the Louisiana bar, were within the main channel of the river; that the main channel of the river from meridian 91° 03′ west longitude to the southerly end of the Albemarle Bend was wholly or partially within what had been the Mississippi mainland.

The bank and bar lines of the 1894 survey having been platted on the 1882 map by the Mississippi River Commission, it is assumed they were correctly located. Defendant's contention, however, is that Island 98 never wholly washed away and that the change in the location of the river between 1882 and 1894 was due to avulsion, by which the river went northerly around the head of Island 98 and cut out the new channel of 1894 to the east of that island, and that the accretions due to erosions of the Mississippi mainland attached to the easterly side of the remnant of Island 98, which it claims was Mississippi territory.

In support of its contention, defendant introduced its Exhibits 4 A-B-C, being blue prints of the Mississippi River Commission's work sheets of the 1894 survey, with bank elevations and river soundings shown thereon. From elevations and the locations of trees shown on these blue prints, and the testimony of defendant's witness Marshall with respect thereto, it is argued that it is impossible that Island 98 was wholly washed away prior to the survey of 1894; and since the 1894 survey shows the main channel of the river east of the location of Island 98, it is argued that the change in the location of the river

between 1882 and 1894 must have been due to avulsion. But the 1894 survey does not show that the main channel of the river was east of Island 98. On the contrary, it shows that all of that island as it existed in 1882, except the small wedge on the northwesterly side, was within the 1894 main channel, and that the small wedge on the northwesterly side was west of the Louisiana bar line, and apparently covered by accretions attached to the Louisiana shore. Furthermore, all of the evidence shows that at this point the river has always cut into its easterly bank. Consequently, the disappearance of Island 98 could not have been due to any erosion on its easterly side.

Captain Marshall testified that on the upper right-hand corner of Defendant's Exhibit 4-A an elevation of 110 feet is shown; that around this high ground the timber line is drawn; that this location is the northerly end of Tullos Island (R., p. 172); that to his personal knowledge Tullos Island was not wholly washed away in 1890 and that it would be impossible that the Island should be wholly washed away and in four years thereafter be built back "with big trees growing on it" as shown by the 1894 survey (R., pp. 175-176). But the high ground in question is not clearly shown to be within the original limits of Tullos Island; still less is it shown to be within the area of that isand as shown on the 1882 survey.

By scaling the distance on Exhibit 4-A, the high ground in question appears to be located about 800 feet north of parallel 32° 37′ north latitude. In 1823 Tullos Island extended about 500 feet north of parallel 32° 37′ north latitude but in 1882 its northernmost point was about 1000 feet farther south than in 1823.

On this high ground on Defendant's Exhibit 4-A the word "willows" appears. No other trees are noted anywhere in that vicinity. The size of this growth is not stated. Captain Marshall nowhere explains what he means by "big trees", nor does he state definitely where those big trees were located, or what kind they were.

North of the middle of Tullos Island as it is shown on the 1882 survey is the word "gum"; near the middle of the island is the word "hackberry"; and near the southerly end is the word "cottonwood", indicating that trees of the kinds named were then growing in those locations. I find no such notations on Defendant's Exhibits 4-A-B-C (the work sheets of the 1894 survey) in the location occupied by Tullos Island in 1882. This indicates the absence there of such trees in 1894. Had any part of Island 98 existed in 1894, undoubtedly gum, hackberry and cottonwood trees, or at least some of them, would have been found thereon. Their absence strongly supports the contention that prior to 1894 Island 98 had wholly disappeared.

Captain Marshall points out two islands shown on Defendant's Exhibit 3 (Sheet 17 of the Mississippi River Commission's Survey of 1882, being the same as Complainant's Exhibit C without the red lines of the 1894 survey shown on the latter exhibit). The witness does not specifically state that these two islands are parts of the original Tullos Island. His testimony on this point is not clear but it may be inferred that he intended to say that in 1882 Tullos Island was divided by a chute into two parts, Upper Tullos and Lower Tullos (R., pp. 171-175-178). Defendant's counsel contends that this was the fact (defendant's original brief, p. 24; p. 59). No map is produced to support this contention. All Government maps show but one Tullos Island, or Island 98, as

it was later called. Although this island is shown in 1882 as greatly reduced in size, it is still called Island 98. What defendant calls "Upper Tullos" appears to be the bar formed adjacent to the Mississippi shore northwest of Island 98, and extending far to the northwest. This bar is not given a name on any of the maps in evidence. Had the engineers of the Mississippi River Commission found the island was thus divided, they would undoubtedly have so indicated on their charts.

The evidence is insufficient to support the contention that Island 98 was ever divided into two parts.

Nor does Defendant's Exhibit D-5—a blue print of the Mississippi River District Map of Albemarle Bend, made by C. H. West, Chief Engineer, dated April 5, 1906—furnish any support for defendant's case. This map purports to show the location of the river channel from 1882 to 1906. Since it shows the channel in 1882 it necessarily shows bank and bar lines and adjacent lands as they existed in 1882, including Island 98, and the bar or island northwesterly thereof then adjacent to the Mississippi shore. This does not imply that either existed in 1894. This map in no way contradicts the evidence to be gleaned from the charts of the surveys of 1882 and 1894, nor does it indicate that the channel of the river was moved other than by erosions on the Mississippi bank and accretions to the Louisiana bank.

With respect to the changes in the location of the river between 1882 and 1894 defendant predicates its defence principally upon the theory that Island 98 never wholly washed away.

The testimony with respect to the total disappearance of Island 98 prior to 1894 is very conflicting and difficult, if not impossible, to reconcile.

Walter A. Newman owned Willow Point up to the time of his death. The title then appears to have vested in his widow and children. They held the title until 1907.

T. B. Beard testified on behalf of complainant that he had known Willow Point for about fifty years; that Walter A. Newman married his sister, and he frequently visited her at Willow Point and went around the bar with his brother-in-law and later with his nephews, Ernest and George Newman; that he had known the place since 1876 when he was ten years of age; he had never seen any island in the river between Willow Point and the Mississippi shore, and that he believed that if islands had been there he would have seen them (R., p. 89; p. 95).

The early recollections of this witness as to conditions down to 1880 when he was quite young do not seem to have been accurate, for the survey of 1882 (made in 1879-80) clearly shows a small portion of Island 98, partially in section 21 and partially in section 28, was then in existence (Charts 45 and 46, Mississippi River Commission survey of 1882; Complainant's Exhibits EE, EEE, M and H; Defendant's Exhibits 6-C and 6-4).

Complainant's witness, Captain W. H. Reed, Sheriff and Tax Collector of Adams County, Mississippi, testified that he had been familiar with the Willow Point section since 1894; that he and his father camped at Henderson Landing south of Willow Point for a month or six weeks in 1894 (R., p. 97).

He was a deckhand on a river steamer in 1900 and then became acquainted with the river channel as a steamboat man (R., p. 102). He had been a licensed pilot and master on Mississippi steamers since 1907 or 1908 (R., p. 96). His earliest recollection of Willow Point and vicinity was in 1894 when he was 22 years of age. He

testified that there was no island in front of Willow Point prior to the cut-off of 1912, and what became an island after the 1912 cut-off was the towhead on Newman's bar or Willow Point bar (R., p. 106).

When this witness speaks of an island he refers to the island which existed after the cut-off of 1912 (R., p. 108).

He believes that from 1897 to 1912 he traversed the river at least once a year and sometimes several times a year, towing timber all up and down the river. He says that it was necessary for him to observe the shore on either side of the river as he went up and down; that Albemarle Bend was the main channel of the river from 1897 to 1912, and that between those dates there were no island between Newman Towhead and the original Mississippi mainland (R., p. 110).

The witness had heard of Tullos Island, but had never seen it and was not familiar with Island 98 (R., pp. 120-121).

Captain George Prince, a witness for complainant, testified that he had been a licensed pilot and master on the Mississippi River for thirty years; that he was acquainted with the Willow Point section and had been since 1897; that at that time he operated a towboat up and down that section of the river (R., p. 22); that from 1897 to 1914 he passed that location from six to ten times every year, and from 1914 until 1920 he had a regular run there; that during that time he had become acquainted with the conditions along the main shore (R., p. 23); that in 1897 there was no island in existence between the sand bar on Willow Point and the main shore; that the main channel of the river was then along the Mississippi shore; that there had never been an island there within his recollection, it being a clear river between

Willow Point and the Mississippi shore so far as islands were concerned (R., pp. 25-26); that at the time of the 1912 cut-off there was no island or land between the Newman Towhead and the main Mississippi shore (R., p. 28); that in 1912 the Mississippi bank was caving very rapidly (R., p. 30); that there was no Island 98 there in his time and that he never knew of such an island (R., p. 34).

Ernest Newman, called by complainant, testified that he was a son of Walter A. Newman, and was born on Willow Point plantation in November, 1888. He could remember back as far as 1897 (R., pp. 49-50). From his earliest recollection in 1897 there was no island between Willow Point and the main shore until the cut-off of 1912 (R., pp. 51-52). He said that he might have heard of Tullos Island, but has no recollection of it; that there was no island at all in the Mississippi River at that place, the first island being made there by the cutting off of a part of the Newman Bar; that there was no island along from the Mississippi shore and that he had been all the way around that shore (R., pp. 57-58).

George R. Newman, another son of Walter A. Newman, was born on Willow Point in 1886 (R., p. 64). He could remember conditions there back to about 1893 (R., p. 66). The Newman heirs sold the property about 1907 and he stayed on a year or two after his mother left (R., p. 81). He knew of no island between Willow Point and the mainland prior to the cut-off of 1912. He was well acquainted with that section and was over there off and on all the time. He testified that there was no island there, the first island there being made by the cut-off of 1912 (R., p. 69). He knew nothing of Tullos Island or Island 98 and had never heard of either. He says there was no island prior to the 1912 cut-off (R., pp. 73-74).

The Newman family claimed the Newman Towhead (R., p. 78).

E. T. Purnell, a witness for complainant, was born on February, 1866; lived at the Kiger plantation in Mississippi until 1880, when he moved to the Purnell plantation (see Complainant's Exhibit EEE; Defendant's Exhibit 6-D) directly opposite Island 98 (R., pp. 259-260). He lived there continuously from 1880 to 1897, except for a few months' interval. He had been on Island 98 "hundreds of times" (R., p. 262). He testified that the main channel of the river had always been on the west side of the island until the island washed away (R., p. 263). His earliest recollection of the island was in 1877 or 1878 (R., p. 272).

The first time he crossed to the western side of the island, probably when he was about ten years old (about 1876), the island was then caving and it continued to cave. It entirely disappeared in 1894 or 1895, during the high water of one of those years, having washed out entirely, not a vestige of it being left (R., pp. 264-265). When he noticed Island 98 was caving, the Louisiana shore was extending out each year after every freshet (R., p. 268). He testified that the island was washing gradually all the way down until 1894 or 1895, when a freshet took it all out, the last part to wash away being in front of Eustacia and Oraton Plantation (R., p. 271).

"Oraton Plantation" was the Purnell Plantation shown on Complainant's Exhibit M (R., pp. 286-287).

He further testified that he knew Hopkins Island and had been on that island, and that when he left there in 1897 there may have been a little of Hopkins Island remaining, but the main portion had caved off (R., p. 275). Hopkins Island is shown on Complainant's Ex-

hibit BB as west of the main channel of the river and is sectionized as Louisiana territory. When shown Complainant's Exhibit H to the bill of complaint, he identified the "High bar" east of the position of Hopkins Island as what he had known as Hopkins Island (R., p. 277). He appears to have been confused in examining the map. He testified that he was not familiar with maps or surveys, and knew nothing about sections, townships or ranges in that locality (R., p. 286).

He says Island 98 was caving all along down the west side in 1873 or 1874 (R., p. 278). According to his testimony, before the over-flow which washed away the remainder of Island 98, that island was probably a half mile long and about 100 to 200 yards wide (R., pp. 282-283); in 1882, Island 98 did not extend down as far as when he first knew it. The lower end was cut off "a considerable"—"way up".

This witness not only had personal knowledge and recollection of the changes made in the course of the river from 1880 on, and the corresponding changes made in the Louisiana and Mississippi shore lines, but also of the manner in which, and the time when, Island 98 disappeared. He was a citizen of Mississippi and, so far as appears, was not interested in sustaining the complainant's claim. His good faith is not questioned, he is a man of high standing and unquestionably had every opportunity to be accurately familiar with the matters about which he testified. As far as I can gather, he, Captain Prince and Captain De Lahunt were the most reliable fact witnesses produced by either party.

Captain De Lahunt, seventy years of age, a pilot and captain on the Mississippi River, testified that he first got his master's license in 1879 or 1880; that he acted as

Captain of various steamers on the Mississippi River until 1908, his run taking in the Albemarle Bend. His attention being called to Sheet 17 of the Mississippi River Commission Maps (Complainant's Exhibit C to the bill of complaint), he stated that his boats passed on the west side of Island 98 (R., p. 292); that that island absolutely disappeared—none of it was left; that it started caving at the head on the west side, went away slowly and kept chipping away and caved all the way; that in 1897 he ran right over what had been the top of the island with a loaded steamboat; that there were no trees to indicate where the island had been; that the channel between "Hopkins Towhead" and Island 98 was very narrow and difficult to navigate, but after the island gave way they had no trouble (R., pp. 292-293); that the channel was west of Island 98 when the island was there; and it ran to the east of Newman's Towhead; that while Island 98 was chipping away, it filled up on the Louisiana side. He never landed on Island 98 because of the snags and trees and things there, which made it dangerous to land. By snags and trees the witness meant the big timber on Island 98 which caved into the river. The witness was passing up and down the river there six times a week (R., pp. 293-294). When he first knew Island 98 (1879 or 1880; R., p. 289), it was nothing but a narrow strip—a mile and a half long, or something like that. At that time there was a chute running to the left of the island going south, but that was not the river. He did not go to the east of Island 98 until after it washed away (R., p. 298). When he first knew Hopkins Island there was no channel west of it, but always east (R., p. 299).

He, like Purnell, was disinterested, had ample opportunity to observe the things about which he testified, and seemed to have a good memory.

All the oral testimony introduced by complainant tends to prove that as early as 1876 the bar attached to the Louisiana shore had extended northeasterly and easterly toward the Mississippi shore about one and a half or two miles; that it grew each year toward the Mississippi shore until 1912 when it had extended northeasterly and easterly a distance of four, five or six miles. People could and did walk over this bar from the Louisiana mainland to the river channel. This condition continued until the cut-off of 1912 (Beard, R., pp. 87-88; Prince, pp. 24-25-26; p. 40; p. 42; Ernest Newman, R., p. 50; p. 52; p. 59; George Newman, R., pp. 68-69; Purnell, R., pp. 268-269).

On this bar a towheard formed known as the Newman Towhead. It took its name from the Newman family who owned the adjacent upland. It grew in height until in places it was as high as the Louisiana mainland and in some places even higher (Beard, R., pp. 88-89; Prince, pp. 26-27; p. 29; pp. 40-41; Ernest Newman, p. 53; Purnell, p. 265).

The trees on this towhead are practically all cottonwood and willow. In 1876 this growth was very small—about three to five feet high (Beard, R., pp. 88-89).

About 1880 the timber on Island 98 was all virgin growth. There were oak and gum trees about four feet through and several very large cottonwood trees, one known as the "big tree" about seven or eight feet through. This big timber was on the western part of the island. There were some other large trees on the island, not so large as those first mentioned (Purnell, R., pp. 262-263).

Thus it appears both from Complainant's Exhibits EEE and M and its oral testimony that the timber on Island 98 in 1880 was very different from and much

larger than the timber on the Newman Towhead. It nowhere appears that there were oak, gum or hackberry trees on any part of Newman Towhead.

Therefore, with respect both to the total disappearance of Island 98 and to the gradual change in the location of the river between 1824 and 1894, the testimony of complainant's witnesses and the documentary evidence in the case are in substantial agreement.

Defendant introduced oral testimony tending to prove that Island 98 did not wholly wash away.

C. F. Hume testified that he lived at Chotard (which is located on the Mississippi mainland below the southerly end of Island 98 as it existed in 1882) from October, 1896 to January, 1907; that he was familiar with Island 98 and that there was "land" there in 1896; "at that time we called it a bar" (R., p. 191). With considerable hesitation he at times calls the land he mentions "an island".

He says this island was there in 1907; that it never washed away; that it built up all the time, growing larger (R., p. 194); that in 1896 the *upper* part of that land was almost due west from Chotard Landing (R., p. 191; p. 207). He had been on "what we claim the island is now" (R., p. 195). The land he spoke of as an island was connected with the Louisiana shore in low water. He does not know whether this land or island was a part of the original Island 98 (R., pp. 207-8).

He testified that on this island there were cottonwood and willow trees three feet in diameter (R., p. 193); that the larger trees were in the lower part of the island in front of Chotard (R., pp. 200-201).

Bearing in mind that the witness is testifying to conditions that existed after 1896, it is to be observed that

the 1894 survey shows that all but a small wedge or part of the territory occupied by Island 98 in 1882 was in the main channel of the river; that this small wedge was west of the Louisiana bank line and its southerly point was about seven-eighths of a mile north of Chotard Landing. It therefore seems evident that this witness is mistaken when he testified that island did not disappear. Furthermore, in 1896, the Louisiana bar had extended very close to Chotard Landing, and his testimony appears to be more applicable to that bar than to Island 98. This is particularly significant in view of the fact that the witness at times called the land he was testifying about "a bar", and seemed quite uncertain whether it was in fact an island.

R. E. Foster testified on behalf of defendant that he knew Island 98; that since 1882 he had lived on the Mississippi side "right across the river" from that island about three miles over on the land; that he had three places in that vicinity and that the island was in sight of his lower place. He had been a member of the Legislature from Issaquena County since 1912. He had seen the island much oftener than once a month.

The testimony of this witness is self-contradictory on important points and is far from clear, due, evidently, to lack of attention to conditions existing many years before the date of his testimony.

His testimony is that the island "never all washed away; no sir; if it did, I didn't see it. All the main part is there now. It never all washed away" (R., pp. 208-209).

He could not say how much of the island did not wash away; he did not know the extent of the island. "It used to go on up further west, over the upper part there, around next to the Louisiana side". He did not know

how far it was (R., p. 210). Later he testified that he did not know the size of the island when he "first recollected it"; that it did not extend above his place but was just across the river from his lower place—not his home place but his lower place (R., p. 214). In contradiction of this latter statement he later testified that the island was opposite both his places (R., p. 215).

He also said that in the 90's when looking across to the island there was timber growing there, "the best I could tell with the eye". It might be 40 or 50 feet high, maybe more (R., p. 210). He was never on the island. He thought the river in 1882 ran between the island and the Louisiana shore, and that the river shifted there from time to time, very often (R., p. 211). He did not know how long the island was in 1882 or how wide it was, or anything about its size. He simply knew it was there in 1882 and was there at the time he was testifying (R., pp. 215-216). He could not state the size of the trees on the island, although he said that they were cottonwood and willows "from the way it looked". He testified that at the time of the hearing the Mississippi River Channel was between his place and the island. He supposed the channel between the island and the Louisiana side had filled up. The island must have caved because "the river ran on the other side and now the river runs between the island and my place. There must have considerable caved off" (R., p. 216). Again he testified that "the Island is gone—the part next to me is gone and the river channel is there". Again he says—"When the Island was there the river ran between the Island and my place. It did not run between there when I went there in 1882" (R., p. 216).

Explaining his testimony he says: "Now the whole river is between that island and my place * * * There

is no timber between that place and my place; something must have gone out''.

The only way he knew there was any of the island left was by seeing the timber over there, a distance of two miles. He had not been over there himself. He could not tell how big the timber was but he did know that the whole channel of the river was between the island and his place (R., p. 217). He could not tell at a distance of two miles whether the timber he testified about was on the main Louisiana shore or on the island because he had not been on it. He believed, however, that it was on the island (R., p. 218).

The testimony that in 1926 (when Mr. Foster was testifying) the whole river was between the island and his place on the Mississippi mainland is contrary to all other evidence, both oral and documentary, in the case. His testimony as a whole indicates a very hazy recollection and lack of careful observation.

It is entirely reasonable to assume that the land about which the witness was testifying was Newman's Towhead rather than Island 98. I think this is the fact.

Etna J. Albrittian testified on behalf of defendant that his first visit to the premises in controversy occurred in July, 1912, when he went there to look it over. At that time water was running between the island and the Louisiana shore. He went over what he calls the ''island part'' of the premises, sections 20 and 21 and a small part of 28 (R., pp. 241-242). He gives no further details in connection with this visit.

He was again on the island in the early winter of 1923. He and his son claim to hold title by conveyance from the State of Mississippi to a considerable portion of the premises in controversy, mentioning in particular

parts of sections 20, 21 and 28 and all of sections 29 and 30 on Tullos Island "as it existed in 1823". He testified that he had procured a survey to be made in 1924 by a Mr. Hull. Whether he was a licensed surveyor he does not know (R., p. 257). It does not appear that the witness was present or took any part in the survey, and the surveyor was not produced as a witness. He testified that he was familiar with the lands—with the island especially—as he had investigated them closely since he and his son made their purchases in 1923, 1924 and later. As to Section 21 he stated that he was familiar with its location on the ground "From surveyor's marks and sticks". No evidence is given as to the character or extent of the alleged survey or of its accuracy. He does not explain how he identified sections and lots from "surveyor's marks and sticks". It seems clear that his testimony with respect to the location of the premises on the ground is hearsay and not dependable.

On this unsatisfactory evidence as to the location of the premises on the ground, he testifies that the timber on lot 5, section 21, as laid down on Defendant's Exhibit N (Survey of 1823) was cottonwood and willow; that the southern and western line of the cottonwood timber was in lots 3, 4 and 5 in section 21 where there was a belt of large cottonwood and willows going to the river on the western side, and on the eastern side almost exactly parallel with the old chute line; that this timber was 24 to 26 inches in diameter (R., p. 243). In substantially these locations the 1882 survey shows the timber at that date was gum and hackberry (Defendant's Exhibit 6-D).

He said that the soil extending through lots 3 and 4, section 21, was clay.

He refers to a depression called St. Francis Chute shown on Defendant's Exhibit 6-B (Plaintiff's Exhibits M and F) as the river channel of 1823 (R., pp. 245-246). As shown previously in this report, this depression does not appear to be in the location of the 1823 channel.

He testified further that he examined the growth on section 30 as shown on the map 1823; that it consisted of cottonwood, willow, oak, sycamore and dogwood, with sizes in cottonwood and sycamore running from 16 inches to more than 3 feet in diameter. He found one cottonwood tree 10 feet 5 inches in circumference which would be about 3 feet 4 inches in diameter. These trees, he says, were located in the southeast portion of fractional section 30 (R., p. 249). He also says that the largest timber he found would probably be in that part of lot 3, section 21, that is not in the river, and in lot 4, section 21. The timber found in those two lots was the largest timber on the island. The timber he found in lots 3 and 4 and a part of lot 5 in section 21, and a small part of lot 4 in section 28, was larger than the rest of the growth on the island (R., p. 250).

The oak timber the witness claims to have found was about 16 to 18 inches in diameter and was located on the boundary line between sections 29 and 30. There were just a few oak trees. He did not pay particular attention to their size. There were not many sycamore trees, but he did not remember how many. He paid no attention to the size of these trees. They were probably not more than 16 inches in diameter. The dogwood was little scrubby growth, about 4 inches in diameter, and he noticed only one dogwood tree (R., pp. 255-256).

By reference to Complainant's Exhibit M it will be seen that section 30 is located wholly west of meridian

91° 03′ west longitude and north of parallel 32° 35′ north latitude. Referring to Chart 47 of the Mississippi River Commission Survey of 1912-13 (Complainant's Exhibit F) it appears that the only timber shown in the vicinity of what was section 30 in 1823 is cottonwood and willow. No oak, sycamore or dogwood appears.

If such trees now exist, it would seem that they are of a growth later than 1912.

In considering the testimony of this witness, the unsatisfactory character of his identification of the location of the premises on the ground is to be kept in mind. His testimony is clearly in conflict with the documentary evidence in the case. The survey of 1882 (Chart 17 of the Mississippi River Commission; Complainant's Exhibit C to its bill of complaint and its Exhibit H; Defendant's Exhibit 6-A) shows that at that date all of sections 20, 29 and 30, and a considerable part of sections 21 and 28 on Island 98 had disappeared; also that on the Mississippi mainland all of section 31 and more than half of section 32 had disappeared. It seems quite probable that all of lot 3, section 21, had been washed away. The survey of 1894 shows that the remnant of Island 98 which existed in 1882 was either in the river channel or was covered by the extension of the bar attached to the Louisiana shore. Hence the timber found by this witness in 1923 and later must have been a growth subsequent to 1894.

Gum and hackberry trees are shown on the 1882 survey of Island 98. That none of these trees were found after 1894, where that island had formerly been, is very persuasive evidence that the island had wholly disappeared.

Lawrence Towns testified in substance that he went to live at Chotard in February, 1880, when he was about thirteen years old; that he knew Island 98; that some people called it "Scruggs' Island"; that it was right in front of Chotard and ran below there near the Warren County line; it extended nearly to Brunswick (R., pp. 220, 232). For ten years he was a roustabout on Mississippi River steamers beginning when he was about 18 years of age (R., p. 232).

He said that a part of Scruggs Island had been there ever since he had been at Chotard (R., pp. 221-222); that that was the same land as Newman's Towhead (R., p. 239). After the cut-off of 1912-1913 he leased Newman's Towhead with accretions from Rufus F. and Andrew B. Learned. The property was described in the lease as containing about 2,000 acres more or less, known as "The Newman Towhead with accretions, and being a part of Bell and Willow Point Plantations", in East Carroll Parish, Louisiana (R., pp. 226-228). He did not cultivate Newman Towhead but kept 800 or 900 hogs there. He could not say whether Newman Towhead started out from the Louisiana shore but in the next breath said Newman Towhead was never attached to the Louisiana shore by sand bar (R., pp. 228, 237) although he later admitted that the sand bar started out from the Louisiana shore and went toward the Mississippi shore (R., pp. 230-231). He said that the river came through and left the Towhead on the east side towards Mississippi (R., p. 229), and that at the time he was testifying, Newman Towhead was on the Louisiana side of the river (R., p. 237).

This witness appears to be of a low grade of intelligence. His testimony is self-contradictory, incoherent

and difficult to understand. His is the only evidence in the case that tends to show that Island 98 ever extended southerly to the vicinity of Brunswick or the Warren County line. Complainant's Exhibit M shows the most southerly point of Tullos Island in 1823 was about one mile northerly of the Warren County line. The same exhibit shows that the southerly point of the island as located by the 1882 survey is about a quarter of a mile northerly from Chotard. It will be recalled that the actual survey or Chart 46 of the Mississippi River Commission shown on Complainant's Exhibit M was made in 1879-80, and the southerly point was caving at that time. It is entirely clear that at the time this testimony was taken, Newman Towhead was east of the river and not on the Louisiana side (Chart 47, Mississippi River Commission 1913-1915; Complainant's Exhibit F; Defendant's Exhibit 6-B).

At one time he stated that he was uncertain whether Newman Towhead started out from the Louisiana shore, but at another time he stated that it was never attached to the Louisiana shore.

Taken as a whole his testimony has little value.

William Miller testified that he was born in 1875 and lived on Eustacia Plantation on the Mississippi side until he was 10 years old. This was Major Higgins' Plantation and was located easterly of the northerly end of Island 98, as it is shown on the 1882 survey (R., p. 302). He thinks the island then contained about 250 acres—something like that. From Eustacia Plantation he moved to Brunswick where he lived ten years. During that time he went back to Eustacia Plantation about every week (R., p. 310). He worked on steamboats from 1897 to 1916, passing Island 98 six times a week. He saw the

island frequently from 1885 or 1886 until 1916 (R., p. 303).

He says that the lower end of Island 98 all washed away but the upper end did not. He thinks that 75 or 80 acres remained. After the washing stopped the island built back in some places; he does not say where (R., p. 304).

His testimony with reference to the location of Island 98 with respect to the river channel is very conflicting. He stated that he first knew the island in 1882, 1883 or 1884 (R., p. 307). The main channel was then on the east side of the island next to the Mississippi shore (R., p. 304). In contradiction of this he later stated that at his first recollection the channel was on the west side of the island and between the island and the Louisiana shore (R., p. 314). In 1886 it was on the west side of the island but it finally changed back to the east side and washed away the Eustacia Plantation; that this was in 1910 or 1912, and that this change was all made in high water and was "kind of gradual" (R., p. 305). Again he testified that the main channel was never between the island and the Mississippi mainland except in high water; that during low water he could always walk across from the Mississippi shore to the island, and that the big steamboats never went between the island and the Mississippi shore except during high water time (R., pp. 314-315). When he told about the channel changing back he was talking about the cut-off of 1912. That was the only change back that he could remember (R., p. 316).

It is clear from all the other evidence in the case that for several years prior to 1912 the main channel of the river was well to the east of what had formerly been the location of Island 98. Had part of the island remained

the main channel of the river would have been between the Mississippi mainland and the island.

His testimony with respect to the Newman Towhead is clearer and more consistent. He said that Willow Point was located opposite the island; that Newman's Towhead was located on the other side of the river; that it was higher than the balance of the bar; that the Willow Point bar was some 4 or 5 miles long, and that it extended out from the Louisiana shore to the channel of the river and the Newman Towhead "was right there at the end of the bar on Louisiana side"—he "used to put off freight there" (R., p. 317).

The witness knew Captain John De Lahant; he was pilot on practically all of the boats the witness worked on (R., p. 318).

To his knowledge there was nothing but cottonwood and willow on Island 98, and that in 1882 the island contained about 250 acres "maybe" (R., p. 308).

He testified that the island did not cave much between 1882 and 1896; that it caved mostly in 1897; that before 1896 it had caved some on the outside next to the river —"It caved right smart on the lower end", and that the big trees fell into the river sometimes (R., p. 310).

Because of the unsatisfactory character of his evidence in respect to the location of Island 98, I think that little, if any, weight should be given to his evidence in that regard. His testimony in respect to Newman's Towhead was more satisfactory, but it was given on cross examination and in response to leading questions.

Upon the whole, up to 1894 the clear weight of the evidence, both documentary and oral, is to the effect that the river channel had moved gradually from its position in 1824 to that in 1894; that this change had been pro-

duced by erosion on the Mississippi shore and accretions to the Louisiana shore; that when the 1894 survey was made all of Island 98 had washed away and the river had cut into the Mississippi mainland a substantial distance; that accretions to the Louisiana shore had followed the river channel and covered the eroded Mississippi territory, including Island 98, up to the Louisiana bar line of 1894 as shown on the survey of that year.

The evidence is undisputed that between 1894 and 1912-1913 extensive erosions occurred on the Mississippi mainland and extensive accretions attached to the western shore of the river. The failure to sustain defendant's theory that Island 98 never wholly washed away and that the changes in the location of the river channel between 1824 and 1894 had been due to avulsions, leaves without support its contention that the extensive accretions to the westerly shore of the river, which admittedly took place between 1894 and 1912-1913, were accretions to Mississippi territory. On the contrary, the only reasonable deduction from the evidence is that these accretions attached to Louisiana territory and belonged to that State.

Had a very small part of Island 98 remained as claimed by defendant, that part was so insignificant that it is inconceivable that the extensive accretions arising from the erosion of the adjacent Mississippi mainland both northerly and southerly from such remnant of the island (if any remained), attached to that small parcel of land instead of to the extensive bar which moved from the Louisiana shore northeasterly, easterly and southeasterly.

I, therefore, find and so report that the premises in controversy were formed by accretions to the Louisiana shore between 1823 and the avulsion of 1912-1913 when

the river changed its channel to substantially its present location. There may be a very small part of the premises bordering on what was the channel of the river before the avulsion of 1912-13 which were formed by accretions subsequent to that time, due to the fact that the river continued for some little time after the avulsion to flow partially through its old channel, although the main channel had shifted as a result of the avulsion. It is impossible from the evidence to state the extent of these accretions. The rule seems to be that accretions formed under such circumstances belong to the land to which they attach in the same manner as though the main channel of the river had been there. *Arkansas* v. *Tennessee*, 247 U. S. 461; *Same* v. *Same*, 269 U. S. at p. 157. It will doubtless be necessary, therefore, for any commission which may be appointed to locate the middle of the navigable channel of the river before the avulsion of 1912-13, to take into account the accretions which formed on the westerly side of that channel subsequent to the avulsion of 1912-13 and before the river ceased to flow at all through that old channel.

Exercise of Dominion.

Defendant contends that it should have a decree establishing its title to the premises in dispute because of its alleged long possession of, and its exercise of sovereignty and dominion over the same, and complainant's alleged acquiescence therein.

In *Michigan* v. *Wisconsin*, 270 U. S. p. 295, this Court says (p. 308):

> "The rule, long established and never doubted by this court, is that long acquiescence by one state in the possession of territory by another, and in

> the exercise of sovereignty and dominion over it, is conclusive of the latter's title and rightful authority."

The parties accept this statement of the law, but complainant denies that it is applicable to the present case, while defendant avers that it is.

The essential elements of this rule are, long continued possession and the exercise of sovereignty and dominion by one party, and acquiescence therein by the other. If either is lacking, the rule does not apply.

What constitutes possession, the exercise of sovereignty and dominion, and acquiescence therein, depends upon the character of the territory in dispute and all the other pertinent facts and circumstances of each particular case.

On page 22 of defendant's reply brief, the character of the territory in dispute is described as follows:

> "The territory which is here in dispute is low, alluvial lands along the Mississippi River, subject to overflow at all times when the river rises and unprotected in any manner whatsoever by levees or dikes. For these reasons, the land is not fitted for cultivation or settlement except in the most haphazard manner, but has grown up in cotton wood and willow timber."

This description is substantially correct except that the growth of timber thereon appears to be confined to a comparatively small area of this territory.

Considering this phase of the case, and bearing in mind the essential elements of the rule as above stated, it will be observed that the 1882 survey discloses the first definite evidence of accretions attached to the Louisiana shore which had extended over the location of territory

formerly belonging to Mississippi. At the date of that survey all of fractional section 30, a large part of section 29, and a small part of section 28, in Island 98, together with a substantial part of section 31 on the original Mississippi mainland, had been covered by the extension of the sand bar attached to the Louisiana shore.

The 1894 survey shows that the Louisiana sand bar had extended over all the location of Island 98 as it existed in 1823, except that part thereof which was then in the river channel, and that the northeasterly end of that bar had extended onto what formerly had been Mississippi mainland (Complainant's Exhibit C to the bill of complaint). After 1894 and down to the 1912-1913 cut-off, these accretions continued to extend rapidly over the original Mississippi mainland until they ultimately covered parts of sections 9, 10, 15, 16, 17, 22, 27, 28, 31 and 32. Subsequent to that cut-off the accretions continued but at a much slower rate, until the current ceased to flow through the old channel.

Complainant's evidence shows that the Newman house was about 100 yards from what was regarded as the original Louisiana mainland, as evidenced by the topography, the character of the soil, and the kinds of timber growing thereon; that the house was between the levee and the river (George Newman, R., p. 69); that it caved into the river around 1904, 1905 or 1906 (R., p. 79). This evidence tends to show that the house was built on accretions formed subsequent to 1824. That being the case the Newman possession extended to accretions, at least to those which had attached up to the time the house caved into the river, and such possession continued unless and until actual dispossession by the adverse possession of other persons. *Deputron* v. *Young,* 134 U. S. 241.

The Newman Towhead took its name from the Newman family; they claimed to own it and pastured cattle thereon every year (Ernest Newman, R., p. 53; George Newman, R., p. 73, p. 78).

After the cut-off, Lawrence Towns rented from the Messrs. Learned for 6 or 8 years, premises described in the lease as part of Bell and Willow Point plantations located in East Carroll Parish, Louisiana "containing about 2,000 acres, more or less, being what is now known as Newman Towhead". During his term the lessee kept hogs on the premises, at times having as many as 800 or 900 there (R., pp. 226-227-228).

The foregoing facts tend to prove actual possession under title derived from Louisiana up to a few years before the commencement of this suit.

Complainant's witnesses had never heard of any claim of title to the premises in dispute by defendant, or anyone claiming under it, until a very recent date. (Beard, R., p. 90; Ernest Newman, R., p. 54; George Newman, R., p. 70).

Defendant's testimony fails to show that it, or anyone claiming under it, ever took open and notorious possession of any part of the disputed territory. Mr. Albrittian testified that he and his son bought from the defendant certain of the disputed premises in 1923 and 1924. On the assessment rolls in evidence the Albrittians first appear as owners in 1925-1926 (Defendant's Exhibit A, p. 30).

So far as actual physical possession is indicated by the evidence, the advantage is with Louisiana.

The Newmans were assessed and paid taxes in East Carroll Parish, Louisiana. These accretions were never listed for taxation by the Newmans while owned by them,

nor during that time, were they assessed by the taxing authorities of Louisiana (R., p. 53).

The only dominion which defendant claims to have exercised over the disputed premises or any part thereof was by assessing and selling them for unpaid taxes.

Defendant's Exhibit A, pages 1 to 31 inclusive, consists of the assessment rolls covering the premises in question and other property, for certain years between 1848 and 1926. The important period for present purposes is from and after 1880.

An examination of the sheets of this exhibit shows that from 1883 on, certain lands located within the original boundaries of Tullos Island (Island 98) and on the adjacent Mississippi mainland were marked "in river" or "in Mississippi river", and from time to time were assessed for taxation. At times the assessment of lands so marked was merely nominal and at other times it was for substantial amounts.

From the assessment roll of 1919-1920 to these of 1926-1927 inclusive, all the sections constituting the original Tullos Island, except fractional section 30, were marked "in river" or "in Mississippi river". Section 30 was so marked on the assessment rolls for 1919-1920. For the other years between those dates, no notation appears with respect to section 30. From 1883 to 1887-1888 inclusive, section 30 is marked "in Mississippi River", and the valuation for each year appearing on these sheets is $1.00. From 1919-1920 to and including 1926-1927 this section is valued at $50. Whenever the section appears on the assessment rolls beginning with 1848, its area is stated to be 95 acres. Yet the 1882 sur-

vey of the Mississippi River Commission shows this section had then been entirely covered by the accretions attached to the Louisiana shore.

"Island 98" appears as a separate item on the assessment rolls for 1889, 1892, 1896 and 1898. On the 1889 assessment roll it is sectionized in section 31 on the Mississippi mainland, yet on the 1882 survey of the Mississippi River Commission the southerly end of Island 98 is more than one mile northerly from section 31.

On the assessment roll for 1889, the area of the island is stated to be 1,000 acres valued at $500. On the 1882 roll, the area is stated to be 50 acres, valued at $50. On the 1896 and 1898 rolls the area is stated to be 1,000 acres valued at $1.00. In 1892, 1896 and 1898 the island is not assigned to any section.

These assessment rolls are clearly contradictory of the contention of defendant that Island 98 never wholly washed away. If it was in the river in the years indicated by the assessment rolls it must then have been wholly washed away.

Due to the uncertain and conflicting character of the assessments, they fail to substantiate defendant's claim that it exercised any real dominion over the disputed territory.

But in addition to this there is no evidence in the case that Louisiana had any knowledge whatever of the alleged exercise by Mississippi of sovereignty or dominion over the disputed territory until a short time prior to the bringing of this suit. In the absence of knowledge there can, of course, be no acquiescence.

Conclusions and Recommendations.

On the whole case I, therefore, find and respectfully report—

1. That the changes in the location of the channel of the Mississippi Rver at the place under examination herein, from 1823 to the change which took place in 1912-1913, were due to gradual erosions on the Mississippi shore and gradual accretions to the Louisiana shore, and that none of said changes was due to avulsions.

2. That the change in the location of the channel of the river which took place in 1912-1913 was due to an avulsion whereby a new channel was formed in approximately the location where it existed at the time the testimony herein was taken.

3. That the accretions which attached to the Louisiana shore up to the avulsion of 1912-1913, and thereafter so long as the current continued to flow in the channel as it existed prior to said avulsion, became Louisiana territory.

4. That the boundary line between the parties hereto was not changed by the avulsion of 1912-1913.

5. That Mississippi did not, by possession or the exercise of sovereignty or dominion over the disputed territory, acquire any right or title thereto.

6. That at this time the true boundary line between the States of Louisiana and Mississippi is the middle of the navigable channel of the Mississippi River as said channel was located at the time when the current ceased to flow therein because of the new channel produced by the avulsion in 1912-1913.

I, therefore, recommend:

1. That a decree be entered herein in conformity with these findings.

2. That a Commission be appointed by this Court to locate and fix on the ground the true boundary line between the parties hereto in conformity with these findings.

Respectfully submitted,

THOMAS G. HAIGHT,
Special Master.

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CHARLES ELMORE CROPLEY
CLERK

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

NO. [redacted]IGINAL 6
IN EQUITY

STATE OF LOUISIANA, Complainant,

vs.

THE STATE OF MISSISSIPPI, Defendant.

EXCEPTIONS TO REPORT OF SPECIAL MASTER.

GEORGE T. MITCHELL,
Attorney General of Mississippi.

PAT HENRY,

ELMER C. SHARP,

HIRAM H. CREEKMORE,
Solicitors for the State of Mississippi, Defendant.

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

NO. 9, ORIGINAL

IN EQUITY

STATE OF LOUISIANA, Complainant,

vs.

THE STATE OF MISSISSIPPI, Defendant.

EXCEPTIONS OF THE STATE OF MISSISSIPPI, DEFENDANT, TO THE REPORT OF HONORABLE THOMAS G. HAIGHT, SPECIAL MASTER.

The State of Mississippi, Defendant, excepts to so much of the report of Honorable Thomas G. Haight, Special Master as finds:

A. That the changes in the location of the channel of the Mississippi River at the place under examination herein, from 1823 to the change which took place in 1912-13, were due to gradual erosions on the Mississippi shore and gradual accretions to the Louisiana shore, and that none of said changes was due to avulsions.

(a) 1. That the change in the position of the Mississippi River between 1824 and 1866 was not produced by avulsion.

(a) 2. That up to 1870 the change in the location of the Mississippi River was not by avulsion but by erosion and accretion.

(a) 3. That in 1882 all that part of the original Island Number 98 or Tullos Island located in Sections 20, 29 and 30 had disappeared as had also a considerable portion of the part located in Sections 21 and 28.

(a) 4. That at and prior to 1882 accretions attached to the Louisiana shore covered the Southwest corner of Section 20, a large part of Section 29 and all of Section 30, within the boundaries of Tullos Island as it existed in 1823, and also portions of Section 31 and 32 on the Mississippi mainland of 1823.

(a) 5. That at and before 1894 by erosion all of the remnant of Island 98 had disappeared.

(a) 6. That by accretions the bar attached to the Louisiana shore had extended northeasterly and easterly and had covered all that part of the former Mississippi territory lying westerly of the 1894 bar line and including all of Tullos Island as it existed in 1823.

(a) 7. That in 1894 all of Island 98 was either covered by the extension of the Louisiana bar or was in the main channel of the river.

(a) 8. That the change in the location of the river between 1882 and 1894 was not due to an avulsion.

(a) 9. That in 1882 Tullos Island was not divided by a chute into two parts, Upper Tullos and Lower Tullos.

(a) 10. That the premises in controversy were formed by accretions to the Louisiana shore between 1823 and 1912-1913, when by avulsion the river changed its channel to substantially its present location.

(Complainant's exhibits "A," "C," "G," "H," and "M."

Defendant's exhibits "2," "3," "4A," "4B," "4C," "4D," "5," "6A," "6B," 6C," "6D," "6F," "7A," "7B," "V1," "V2," consisting of maps.

Defendant's exhibits "G," "H," "I," "J," "K," "L," "M," consisting of documents not printed.

Printed transcript of record: Testimony of Horace M. Marshall, pages 168-188 inclusive and particularly 172, 173, 174, 175, 177, 178, 180, 181, 183, and 185.

Testimony of C. F. Hume, pages 190, 191, 192, 204, 205.

Testimony of Lawrence Townes, pages 221, 222, 233, 236, 237, 238.

Testimony of Ernest Newman, pages 51, 52, 55, 58, 59, 60 and 63.

Testimony of George R. Newman, page 68.

Testimony of W. H. Reed, pages, 104, 105, 107.

Testimony of E. T. Purnell, page 265.

Testimony of E. J. Albrittan, pages 242-251 inclusive.)

B. That the accretions which attached to the Louisiana shore up to the avulsion of 1912-1913 and thereafter, so long as the current continued to flow in the channel as it existed prior to said avulsions, became Louisiana territory.

C. That Mississippi did not, by possession or the exercise of sovereignty or dominion over the disputed territory, acquire any right or title thereto.

(c) 1. That Louisiana had no knowledge of the exercise by Mississippi of sovereignty or dominion over the disputed territory until a short time prior to the bringing of this suit.

(c) 2. That the evidence fails to substantiate defendant's claim that it exercised any real dominion over disputed territory.

(Defendant's exhibits "A" to "N" inclusive and V-2").

D. That at the time of the filing of the report of the Special Master the true boundary line between the States of Louisiana and Mississippi is the middle of the navigable channel of the Mississippi River, as said channel was located at the time when the current ceased to flow therein because of the new channel produced by the avulsion in 1912-1913.

Respectfully submitted,

GEORGE T. MITCHELL,
Attorney General of Mississippi.

PAT HENRY,

ELMER C. SHARP,

HIRAM H. CREEKMORE,
Solicitors for the State of Mississippi, Defendant.

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CHARLES ELMORE CR
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

NUMBER 6 ORIGINAL.

IN EQUITY.

THE STATE OF LOUISIANA, *Complainant,*

vs.

THE STATE OF MISSISSIPPI, *Defendant.*

BRIEF OF COMPLAINANT IN ANSWER TO EXCEPTIONS TO REPORT OF SPECIAL MASTER.

PERCY SAINT,
Attorney General of Louisiana,
GERARD BRANDON,
JOHN DALE,
ROBERT ASH,
Of Counsel for State of Louisiana.

PHILIP HOUGH,
GERARD H. BRANDON,
JOHN DALE, JR.,
L. D. DALE,
Solicitors for the State of Louisiana.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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SYLLABUS.

1. The middle of the channel of navigation—not necessarily the deepest part—is the boundary line, where navigable water constitutes the boundary line between two States.

   Minnesota v. Wisconsin, 64 L. Ed., 558-563-564.
   Iowa v. Illinois, 37 L. Ed., 57.
   Washington v. Oregon, 53 L. Ed., 969.
   Arkansas v. Tennessee, 62 L. Ed., 638.
   Minnesota v. Wisconsin, 64 L. Ed., 563.

2. The boundary line between the States of Louisiana and Mississippi is the boundary line as it existed at the date of the treaty by which Louisiana was acquired, subject to changes made by erosion or accretion.

   See Oklahoma v. Texas, 67 L. Ed., 435.

3. Where a navigable river is the boundary line between two States and the channel of navigation is changed by the natural and gradual processes known as erosion and accretion, the boundary follows the varying courses of the stream.

   New Mexico v. Texas, 72 L. Ed., 127, in No. 4.
   Oklahoma v. Texas, 68 L. Ed., 1120.
   Oklahoma v. Texas, 67 L. Ed., 435.
   Arkansas v. Tennessee, 62 L. Ed., 638.
   Nebraska v. Iowa, 36 L. Ed., 186.
   New Orleans v. U. S., 9 L. Ed., 573.
   L. R. A., 1918 D., 258.

4. Where, in a stream which is the boundary line between two States, an avulsion occurs, the resulting change in the channel works no change in the boundary, which remains in the middle of the old channel as it existed just prior to the avulsion (subject to change by accretion as long as the water continuously flows therein).

Arkansas v. Tennessee, 70 L. Ed., 208.
Arkansas v. Tennessee, 62 L. Ed., 1213-638.
Oklahoma v. Texas, 67 L. Ed., 435.
Arkansas v. Mississippi, 63 L. Ed., 832.
Missouri v. Nebraska, 49 L. Ed., 881.
Nebraska v. Iowa, 36 L. Ed., 188.

5. While, after an avulsion or cut-off made by a river which is the boundary between two States, the boundary immediately after the cut-off is the same, as just prior thereto, such boundary is subject to change by accretion as long as the water *continuously* flows through the old channel, but when the water ceases to run therein, and becomes stagnant, the boundary line becomes *fixed* in the middle of the old channel at such time and the gradual filling up of the bed that ensues, is not to be treated as an accretion, but as an ultimate effect of the avulsion.

Arkansas v. Tennessee, 70 L. Ed., 208.
Arkansas v. Tennessee, 62 L. Ed., 638.

6. In establishing such boundary line in the old channel, "absolute accuracy is not attainable. A degree of certainty that is reasonable, as a

practical matter, having regard to the circumstances is all that is required."

Arkansas v. Tennessee, 70 L. Ed., 208.

7. Where there is an avulsion causing the drying up of the old bed, it does not have the effect of establishing as the boundary the ancient boundary, as it existed at the earliest record.

Arkansas v. Tennessee, 62 L. Ed., 639.

8. Where the water cuts through an accretion *once vested*, it does not destroy the ownership of the land cut off from the main body.

DeLassus v. Faherty, 164 Mo., 361; 64 S. W., 183.

Cited in 15 Dec. Nav. Waters, Sec. 44 (3).

9. Where a navigable river is the boundary between two States and the river is changed several miles by erosion on one side and accretion to the other, the boundary between the States changes with the river, although the accretion to one State covers the *location* formerly belonging to the other State.

See Doebbeling v. Hall, 41 A. L. R., 389.

10. Land formed beginning next to the shore extending into the channel is accretion, *though higher next to the channel.*

State of Kansas v. Merriweather, 182 Fed., 457.

15 Dec. Nav. Waters, Sec. 44 (3).

11. One asserting material changes in the course of a boundary river which will affect the boundary has the burden of proving them, whether plaintiff or defendant.

Oklahoma v. Texas, 67 L. Ed., 428.
Bissell v. Fletcher, 27 Neb. 582; 43 N. W. 350.
9 C. J. 271.

12. Circumstances sometimes carry with them a conviction which the most positive testimony will sometimes fail to produce.

The Robert Edwards, 5 L. Ed., 238.

13. Circumstances altogether inclusive, if separately considered, may, by their number and joint operation, be sufficient *to constitute conclusive proof.*

Kemper v. Churchill, 19 L. Ed., 461.
Castle v. Bullard, 16 L. Ed., 421.
Wagner v. Hall, 21 L. Ed., 504.

14. The mere fact of the assertion of territorial jurisdiction by a government over territory in dispute between it and another one, and the enforcement there of its civil and criminal laws for a period of years, is not sufficient to establish its title to the territory where there has been neither a *continuous assertion of right on the one side, nor an acquiescence therein upon the other.*

State of Oklahoma v. State of Texas, 71 L. Ed., 146.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

NUMBER 8 ORIGINAL.

IN EQUITY.

THE STATE OF LOUISIANA, *Complainant*,

VS.

THE STATE OF MISSISSIPPI, *Defendant*.

BRIEF OF COMPLAINANT IN ANSWER TO EXCEPTIONS TO REPORT OF SPECIAL MASTER.

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

NATURE OF SUIT AND CONTENTIONS OF THE PARTIES.

This suit is brought to locate and establish by the decree of the Court, that part of the boundary line between the States of Louisiana and Mississippi which separates Willow Point and adjacent premises in Louisiana from Township 9 North, Range 8 West in Mississippi.

Surveys made in 1823 and 1824 are accepted as correctly locating the river and the shore line of the states at the date of these surveys respectively.

By order entered herein at the October Term, 1928, this case was referred to Honorable Thomas G. Haight, Special Master, with direction that he find the facts therein, and report them to your Honorable Court, together with his conclusions of law, and his recommendations for a decree herein.

In 1930, the Special Master filed his report herein, finding the facts to be as claimed by the State of Louisiana, and he found the law relied upon by complainant to govern the case. In fact, he found that, *generally*, there was no disagreement as to the law applicable.

On Monday, the 18th of May, 1930, the court ordered the Report of the Special Master to be filed, with right to the parties to file exceptions on or before Monday, October 6th, 1930.

The State of Mississippi filed Exceptions to said Report contained in four pages under Exceptions A, B, C and D, which we refer to, but do not copy herein for the reason that the defendant excepted to the entire report of the Master.

On Monday, October 13th, 1930, your Honors rendered an order assigning the exceptions to the report of the Special Master for hearing, Monday, January 5th, 1931, and ordered that brief for the defendant should be filed three weeks prior to the date of argument, and that of the complainant, one week prior to that date.

The complainant and defendant agree that the middle line of the navigable channel of the river at the respective dates of these surveys was then the true boundary line.

In 1823-24 location of the premises in controversy were known as Tullos Island, and certain parts of the Mississippi mainland adjacent thereto. Prior to 1882, this island was renamed "Island No. 98".

The complainant, the State of Louisiana, contends:

1. That between the dates of the surveys made in 1823 and 1824 and the survey made by the Commission in 1912-1913, erosions took place on the Mississippi shore of the river and accretions attached to the Louisiana shore; that thereby the location of the river, and hence of the boundary line, was gradually and imperceptibly moved in an easterly and northeasterly direction a distance of five or six miles, and that these accretions to the Louisiana shore became Louisiana territory.

2. That in 1912-1913 the river suddenly changed its course, cut across the bar formed by the accretions to the Louisiana shore, and thereby the navigable channel of the river was suddenly changed to the location shown by the survey made in 1912-13 (Complainant's Exhibit F); but that this change, being by avulsion, the boundary line remained and now is where the extreme northeasterly and easterly midchannel of the river around the Albemarle Bend was prior to the avulsion, subject to change by accretion as long as the water continuously flowed therein.

The State of Mississippi disputes complainant's contentions and claims:

1. That the burden is on the complainant to prove that the Mississippi River gradually moved northeasterly and easterly from its 1823 channel to its 1882 channel, and that the Louisiana shoreline pro-

gressively followed it by accretions; that Louisiana has failed to bear this burden, and by reason thereof it has failed to show title to accretions which admittedly attached to the westerly shore of the river subsequent to 1882.

2. That subsequent to 1882 the river above and to the west of Willow Point cut into the Louisiana shore and thereby deflected the current from a southeasterly to a northeasterly direction; that the river, thus deflected, cut around the head and to the north and east of what was then left of Tullos Island, enlarged what is known as the "chute" between the island and the Mississippi mainland, making a new channel there; that the old bed of the river to the west of Tullos Island filled up, and thereby that island became attached to the Louisiana shore; that the river continued to cave the Mississippi shore east of Tullos Island and added to that Island by accretions until 1912-1913, when it suddenly abandoned its new channel and returned to the old 1882 channel, and thereby what theretofore had been Tullos Island again became an island, but greatly enlarged by accretions thereto.

3. If defeated in these contentions, Mississippi claims that its title to the disputed territory has become unassailable by reason of its long continued possession of, and its exercise of sovereignty and dominion over the same, with acquiescence therein by Louisiana.

FINDINGS OF THE SPECIAL MASTER.

1. That the changes in the location of the channel of the Mississippi River at the place under examin-

ation herein, from 1823 to the change which took place in 1912-1913, were due to gradual erosions on the Mississippi shore and gradual accretions to the Louisiana shore, and that none of said changes was due to avulsions.

2. That the change in the location of the channel of the river which took place in 1912-1913 was due to an avulsion whereby a new channel was formed in approximately the location where it existed at the time the testimony herein was taken.

3. That the accretions which attached to the Louisiana shore up to the avulsion of 1912-1913, and thereafter so long as the current continued to flow in the channel as it existed prior to said avulsion, became Louisiana territory.

4. That the boundary line between the parties hereto was not changed by the avulsion of 1912-1913.

5. That Mississippi did not, by possession or the exercise of sovereignty or dominion over the disputed territory, acquire any right or title thereto.

6. That at this time the true boundary line between the States of Louisiana and Mississippi is the middle of the navigable channel of the Mississippi River as said channel was located at the time when the current ceased to flow therein because of the new channel produced by the avulsion in 1912-1913.

I.

Defendant first contends that complainant has failed to prove, by a preponderance of the evidence,

that the moving of the Louisiana shoreline, in an eastern and northeastern direction, at the point in controversy, between the years 1824 and 1882, was the result of accretion, and not the result of an avulsion, and having thus failed, the decision of the court must be in favor of the defendant.

We will, therefore, consider the testimony in the record, between the dates of 1824 and 1882, to determine whether there is any merit in defendant's contention on this point.

Complainant's "Exhibit G" was offered in evidence without objection. On this "Exhibit G" the Louisiana bank line of the river in 1866 was shown. (R. 129.)

In addition to this, in January, 1929, the following agreement of counsel was entered into, to-wit:

AGREEMENT OF COUNSEL, JANUARY, 1929.

In the above numbered and styled cause, the counsel of complainant and the counsel for defendant have made and signed the following agreement, to-wit:

1st, That in R. 175, it is admitted that witness, Capt. H. M. Marshall said:

> "There was a swift current flowing down between the two islands, and a channel to the East of both islands. Without being able to say how wide it was, it was possibly 1000 feet wide, etc., instead of 100 feet wide, as transcribed in the record."

2nd, That the questions and answers of Capt. Chas. H. West, as shown on pages 28, 29 and 30 of Com-

plainant's First Supplemental Brief, be received in evidence herein, with the same effect as if he had been testifying as a witness.

That the following blue prints be admitted as evidence when certified to by Walter H. Hoffman, Secretary of the State Board of Engineers of the State of Louisiana, as correct copies of the original on file in the office of the State Board of Engineers, to-wit:

1st, Map showing changes in river bank and levee lines along the front of Illawara and Villa Vista Plantations, in the Parishes of East Carroll and Madison, Louisiana, from 1824 to 1889. * * * Prepared in office of the State Board of Engineers, New Orleans, La., Jan. 3rd, 1900. Scale 1:20,000.

2nd, Map of the Alsatia, Salem, Villa Vista, Mascot Bend, in the Parishes of East Carroll and Madison, Louisiana, showing levees built from 1866 to 1906, and bank lines of 1866 and 1899, prepared by requst of Capt. G. H. Hoffman, U. S. A., from the records of the office, by the State Board of Engineers, January, 1906. Scale 1:20000.

3rd, Blue Print from original tracing, showing Louisiana bank line of 1866, at Willow Point and vicinity. This agreement is signed in triplicate, in January, 1929.

The State of Louisiana.
By John Dale.

The State of Mississippi,
By Rufus Creekmore.

Notwithstanding the fact that complainant's "Exhibit G" was introduced and filed in evidence without objection, and notwithstanding the above agreement and the introduction thereunder of the two blue prints showing the Louisiana bank line of the river in 1866, in front of Willow Point, the defendant, on page 11 of its brief on exceptions to the Master's Report, says the map of 1866 was not introduced in evidence, and on page 49 thereof it says:

> "The purported map of 1866, R. 147, was not introduced in evidence, and the blue print based on such was not admissible in evidence, because not founded upon any facts disclosed by the record, and being in effect hearsay."

This objection is urged, notwithstanding the fact that defendant, in January, 1929, agreed—

That the following blue prints be admitted in evidence, when certified to by Walter H. Hoffman, Secretary of the State Board of Engineers of the State of Louisiana, as correct copies of the original on file in the office of the State Board of Engineers, to-wit:

The two blue prints, and what they show, as set out in the above agreement of counsel is here shown. They show, among other things the Louisiana bank line of 1866.

Small copies of these blue prints showing the Louisiana bank line, at Willow Point, in the years 1824, 1866 and 1882, appear at page 32 of complainant's Second Supplemental Brief.

Complainant's "Exhibit G" to the bill of complaint is a blue print made by Captain C. H. West, a Civil Engineer in active practice for 42 years, and a member of the Mississippi River Commission since 1910.

On this blue print Captain West had combined and correlated on one sheet the 1823 survey of a part of Township 9 North, Range 8 West, Issaquena County, Mississippi, and the survey of 1824 of a part of Township 19 North, Ranges 14 and 13 East, Parish of East Carroll, Louisiana; also the Louisiana and Mississippi bank lines of the river at the date of these surveys respectively. By broken lines he shows the Louisiana bank line of the river in 1866.

It is not disputed that Complainant's "Exhibit G" shows correctly the Mississippi River Commission's Survey of both the Mississippi and Louisiana territory in question, and the respective bank lines of those states at the respective dates when these surveys were made; or that this exhibit shows the correct relation of these two surveys to each other, although, in the brief opposing the Master's Report, defendant claims there is no competent evidence of the survey of 1866.

It is undisputed that between 1823 and 1913 the location of the Mississippi River at the place in question had changed from that shown by the surveys in 1823 and 1824 to a location five or six miles northeasterly and easterly therefrom, the latter location being shown by a survey of the Mississippi River Commission made in 1912-1913 (Complainant's "Exhibit F"; Defendant's "Exhibit 6-D"). That survey shows the channel of the river both before and after the cut-off of those years.

The 1866 Louisiana bank line at Willow Point, including Sections 1 to 9, is also shown on Complainant's "Exhibit H", a small copy of which is inserted in defendant's original brief at page 60 thereof.

The next survey of the Louisiana bank line at

Willow Point is shown in Complainant's "Exhibit B. B." This was a survey of Hopkins' Island, made in 1869-1870, by Rob't Boyd, U. S. Government Surveyor, under instructions of the Surveyor General of Louisiana.

This survey of 1869-1870 shows the relation of Hopkins' Island to Louisiana, and the location of the Louisiana bank line as it then existed at *Willow Point, including Sections 1 to 9.*

Complainant's "Exhibits E.E. and E.E.E." show the Mississippi River Commission Survey made in 1882 with soundings taken, the charts being completed in 1882, and which is usually designated as the 1882 survey. This survey shows the bank line of *Willow Point at this time, and shows the sections referred to from 1 to 9.*

The chart of the survey is also shown on Complainant's "Exhibit M", a small copy of which defendant has inserted at page 12 of its original brief, showing *Willow Point, including Sections 1 to 9.*

On pages 10 and 11 of Complainant's *First Supplemental Brief*, there is a table showing the changes in the fan shaped Sections 1 to 9, being Willow Point in Louisiana. The inland part of these sections all start from a common point and extend in a fan shape to the river. In this table complainant had estimated 73 yards on the ground to 1/8 of an inch on the map. The exact distance is 70 yards to 1/8 of an inch on map 1 to 20,000.

By taking the scale of the U. S. Survey of 1824, which is on a scale of 2 inches to 1 mile, that is, 2 inches to 1760 yards, this would give 110 yards on the ground to 1/8 of an inch on the map; therefore, it is easy to ascertain the length of each section line of said Sections 1 to 9 as they existed in 1824.

Complainant's "Exhibit G" is on a scale of 1 to 20,000; that is, 1 inch on the map would represent 20,000 inches on the ground.

Then by measuring from end of the section line as same existed in 1824, to the Louisiana bank line of 1866, it is an easy matter to ascertain how far the river moved eastward, at any given point between 1824 and 1866; and by applying the same methods, it is easy to ascertain how far it moved eastward between 1866 and 1869-1870; and by the same method, it can be ascertained how far it moved eastward between the years 1870 and 1882. By dividing 20,000 inches by 12 it would give the number of feet on the ground to 1 inch on the map, which would be 1666 2/3 feet. By dividing the feet by 3 it would give the number of yards on the ground to 1 inch on the map, or 555.55+ yards. By dividing the yards by 8 it will give the yards on the ground to 1/8 of an inch on the map, or 69.44+ yards to each 1/8 of an inch. To place these calculations in whole numbers, we have used 70 yards on the ground to 1/8 of an inch on the map. This would give a table as follows:—

Table showing yards on the ground, represented by 1/8 of an inch on the map.

Inches	Yards
1/8=	70
2/8=	140
3/8=	210
4/8=	280
5/8=	350
6/8=	420
7/8=	490
1 inch or 8/8=	560

Owing to the fact that the table, shown on Complainant's First Supplemental Brief, at pages 10 and 11, in which 73 yards on the ground was used to 1/8 of an inch on the map, is near enough correct to demonstrate the impossibility of an avulsion at the point in controversy, between the years 1924 and 1882, we are using in this brief 73 yards on the ground to 1/8 of an inch on the map. While 70 yards to 1/8 of an inch would tend to be more favorable to complainant, the difference is too small to make any practicable difference.

Therefore, without again inserting the table in this brief we refer the court to pages 10 and 11 of Complainant's First Supplemental Brief for said table.

ST. FRANCIS CHUTE.

Defendant, in its brief on the Exceptions to the Master's Report on page 11 thereof, says:

> "A depression slightly to the east of the location of the 1823 channel, not named on the charts, but locally known as St. Francis Chute, is clearly shown on each of them."
>
> "Witness for both complainant and defendant show this depression *to be the old filled up 1823 river channel.*"

As the witnesses were not centenarians, of course the court well understands that they could not know that the so-called St. Francis Chute was "*the old filled up 1823 river channel.*"

On page 10 of defendant's brief on the Exception to the Master's Report, he says:

> "The testimony of complainant's witness, George Prince, shows that he is familiar with this old 1823 channel." (R. 39.)

Captain Prince's statement in this matter was on cross-examination, and is as follows:

> Q. Do you know whether or not there is a point where the water now backs up in the old channel of 1823 in times of high water, where the old channel originally came in here?
> A. Yes, sir.
> Q. Water does back up in there, does it?
> (fol. 34) A. Yes, sir.
> Q. At times of high water?
> A. Yes, sir.

It is patent that Cap't Prince, who was 56 years old in 1926, R. 21, and first became acquainted with this section of the river in 1897, could not know whether the said chute was the old channel of 1823. Evidently what the witness was intending to answer was that he knew a point where, in times of high water, the water backed up into a chute. If the witness had been asked the direct question as to whether he knew that was the old channel of 1823, we cannot conceive that he would have replied that he did. It would seem that the answer obtained from the witness, was due to the way the question was framed by counsel for defendant.

Defendant, in its brief, on Exceptions to the Master's Report, on page 10, referring to the 1823 channel says:

> "Complainant's witness, George Newman is also familiar with this channel; (meaning the channel of 1823) his testimony showing that it runs in a *northeasterly* direction from about Henderson's until it reaches the present river channel at about Willow Point." (R. pp. 55, 56, 58, 59, 60.)

The witness referred to as testifying in these pages is Ernest Newman and not George Newman. Complainant will merely submit the cross-examination of this witness on this point to show to the court that the witness did not testify that he was familiar with the old channel of 1823. The witness testified as follows: (R. 55, 56, 58, 59 and 60.)

Q. Do you know anything about St. Francis Chute?

A. Yes, sir.

Q. In 1897, how far east of St. Francis Chute to the head of it?

A. Which direction,—east?

Q. Yes, sir.

A. It was very near at St. Francis at that time. There was a sand bar up beyond, right between—it might be going east. It is about four or five miles.

Q. In 1897?

A. Yes, sir; from the lower end from St. Francis to the tow head it is quite a stretch.

Q. Do you know where the old river channel of 1823 south of Willow Point plantation was?

A. Where the old river channel was?

Q. Yes, sir?

A. *No, sir; I didn't know there was an old river channel in there.*

Q. Does not the water back up in the old channel now?

A. There is a *little chute* that runs off from Henderson, but *there has never been no channel —just a little chute behind the bar.*

Q. Don't you know that when the water is high now that it goes up the old channel for more than a mile? I don't mean when it overflows, but just when there is a comparative high stage of the water?

A. There is just a kind of a slough there that

runs up to Henderson's, and it has been there ever since I can remember.

Q. And that is approximately east of the land down there in Lot 8, south of Willow Point plantation?

A. Where? I didn't hear you.

Q. It is a point approximately east of Lot 7 and Lot 8, a general southeast direction from Willow Point plantation, is it?

A. *No; it is almost due south.*

Q. That's where it was, wasn't it?

A. Yes, sir.

Q. Now, isn't the old channel right here about, right along down here in this direction?

A. *I don't know of any channel in there.*

Q. Isn't it right there today?

A. *Not that I know of.*

Q. From eight to ten feet lower than this land up here in Section 30 and this land down here in 31, right there on the ground today?

A. Well, there may be, but you see this chute that comes through here is a little narrow chute that comes down along the main shore, not in the island. The current in high water will pass up through here, and comes over seven or eight miles around the bend, and we call that St. Francis.

Q. I want to ask you if you would go in there today, if there is not a clear delineation of this channel up in Sections 21 and 20?

A. Do you mean on the island that has been cut off?

Q. Yes, sir?

A. *No, sir.*

On page 11 of defendant's brief on exception to the Master's Report, counsel for defendant says:—

"Defendant's witness, Lawrence Townes testified that he was familiar with this *old river*

channel, St. Francis Chute; that it is on the Louisiana mainland, and runs in a southerly direction down from Mrs. Newman's Plantation."

This remarkable witness testified, when he went there, referring to St. Francis Chute, "*That was the main Mississippi River, when I went there, and it was named St. Francis Chute years later.*"

We will give the court his testimony exactly as he stated it so that there can be no doubt as to what he said. It is as follows:

> Q. Now, you mention a lake that was there in 1900. Was that a lake or a slough?
>
> A. This place what we call St. Francis Chute.
>
> Q. You call it a little lake—you give it the name of St. Francis Chute?
>
> A. It is named St. Francis Chute.
>
> Q. Where is that?
>
> A. Over the other side of the river joining Mrs. Newman's, right down from Mrs. Newman's place, the Newman Tow Head. *That was the main Mississippi River when I went there and it was named St. Francis Chute years later.* (R. 232-233.)

Witness went to Chotard which is across the river from this chute in 1880. (R. 220.)

The chart of 1882 was made by the Mississippi River Commission, a small copy of which is inserted in defendant's original brief at page 12, this being Complainant's Exhibit M, made from Chart 45 of the Survey of 1882. This chart, in front of Sections 8 and 9, shows the Louisiana bank line of 1824, and the bar next to the river in 1882, in front of same sections was about 1½ miles east of the 1824 bank line.

As shown by Judge Haight, Special Master, on page 12 of his report, the counsel for Mississippi admitted on page 12 of their original brief, that in front of Section 7 the channel in 1882 had changed eastward approximately 1½ miles from the *1823* (1824) survey.

Sheet 17 of the Mississippi River Commission charts, shows in 1882 heavy timber growing where Townes testifies was at that time the channel of the Mississippi River.

This witness is contradicted by the surveys of 1866 and 1870, as shown in the table hereinabove set out, and by the survey of 1882, and by the following witnesses, to-wit: I. B. Beard, the Newmans, E. T. Purnell, and Cap't. Jos. V. De Lahunt.

Mr. Beard, who was born in 1866, and recollected Willow Point for 50 years (since 1876), and was a brother-in-law of the owner, Walter A. Newman, and visited said place quite often (R., 86), said that at his earliest recollection the Willow Point bar had extended out from the mainland one and one-half or two miles; that the bar started right where it joined the bank (R., 87).

Mr. Purnell was born in 1866 (R., 259), moved to the Purnell plantation, on the Mississippi River opposite and directly east of Island 98, in 1880 (R., 260). He remained at this place from 1880 to 1897; that he hunted on Island 98 hundreds of times; that when he first knew the Island the *main channel* of the river was immediately west of Island 98 (R., 261). It could not, therefore, have been through the little chute mentioned. He further said there was a towhead building up on the Louisiana side (R., 265).

Captain De Lahunt was 70 years old (R., 288). He was licensed as a pilot on the Mississippi River in

1879 or 1880 (R., 289); made three daylight trips per week (R., 290), passing up and down the stretch of the river in controversy (R., 291). The channel was west of Island 98 with the current *against the island* (R., 292-293).

Therefore, the testimony of the defendant's witness Townes that when he first went to the locality in question, which was in 1880, that the little chute which is shown to have been south of Willow Point, running up to Hendersons, was the main channel of the Mississippi River, is clearly erroneous.

The witness for defendant, Mr. Etna J. Albrittain, who is claiming part of the land in controversy, made his first trip to the vicinity in question to look it over in July, 1912. (This was after the avulsion in the high water of 1912.) The steamboat which he was on left (what he pleased to call Tullos Island, or Island 98) the island to the left of us. At this time he went over the island part of the land. At this time the water was flowing on both sides.

From this testimony he did not visit the vicinity of what is locally called St. Francis Chute at this time. The next date he could recollect as having visited this property was in the fall of 1923. (R., 242.)

This witness further testified that along the old channel of 1823 (1824) down next to Hendersons the water was about 200 yards wide; that Chart 47 shows the channel about 10 feet lower than the land on either side. He said they thought by going up the old river bed they could surround the water that was backed into the channel, but could not, as they found water all the way to where it went into the river at the north. (R., 246-245.)

However, the witness also says: "Well, after a dis-

tance of a mile north of Hendersons, *there was no discernible bank line on the west.* (R., 246.) Comment: The first place below Willow Point is Bell Plantation formerly owned by Mrs. M. G. Foster. This place was more than one mile across, and "Hendersons" is the next place below same, so that by the time the witness reached Willow Point he found no discernible bank line.

Mr. Beard, being asked as to the property south of Willow Point, said he thought it was the Bell Plantation belonging to a Mr. Foster. (This was not Mr. R. E. Foster who testified.) (R., 92.)

The entire testimony, maps and surveys show that if there was any depression left where Willow Point bar joined the mainland it was very small.

By examining Complainant's "Exhibit A", being township survey of T. 19 N., R. 13 and 14, showing the original bank line of Louisiana, as shown by the Government land survey of 1824, it will be seen that the course of the river for several miles just north of the property in controversy is just a little south of east, the course being *almost east*, and that it turned Willow Point in a sharp angle south. This necessarily caused the current to flow against the western part of Tullos Island, or Island 98.

Complainant's "Exhibit G", showing the Louisiana bank line of 1866, does not materially change the condition in this regard existing in 1824, except that some caving had taken place along said north line of Willow Point, but very little.

By an examination of the various charts of the survey of 1882, it will be seen that the general course of the river north of Willow Point was still almost east, with a slight trend toward the north, and that it had

cut away most of Tullos Island, or Island 98, particularly the southwestern part, and that the channel then flowed against the southwestern part of what was left of the island.

In addition to the surveys, Mr. Beard says there was caving on the northern part of Willow Point Plantation (R., 89-93-94); that the channel at this point ran east (R., 90). It had been caving on the north side ever since he could remember. *It was a gradual caving* (R., 94).

This testimony is referred to to show that for the river between 1824 and 1882 to have made an avulsion through the little chute, locally called St. Francis, or at any place through where Willow Point or bar now is, the river must have made such cut-off at a right angle to its course, which is beyond the realm of probability. However, as the river at the lower end of sec. 4 never went west of the Louisiana bank line of 1824, and as the surveys of 1866, 1870 and 1882 show that the greatest distance the river had moved east from the time of one survey to the time of the next was only 1,245 yards, being less than three-fourths of a mile, and *if not less than the width of the river, approximately its width*, conclusively demonstrates that between said periods there could not have been an avulsion of the river at this point through Mississippi territory, so as to throw a portion of Mississippi territory west of the river, onto which the land in question could have built.

It is shown that the channel was on the Mississippi side east of the land in controversy, and that islands and bars only build where the current slackens so that silt may deposit. Therefore, the claim of the State of Mississippi that complainant has failed to

show that such an avulsion had not taken place is not well founded, and this point must be decided against it.

Defendant has made the point that complainant must bring itself within the rule governing riparian proprietors, and that the complainant cannot recover, unless it has shown that the accretions attached to the bank.

Defendant is mistaken in this contention. In Louisiana the State owns the channel to the center of the stream.

It is immaterial whether the formations of land attached to the bank as accretion or formed west of the center of the channel as a sand bar or island, as all islands, towheads or sand bars which form in the river west of the channel belong to the State of Louisiana, as well as accretions that may attach to them.

Since the starting date, 1823, is over a hundred years ago, and since 1882 is over forty-five years ago, it is manifestly impossible to furnish the testimony of eye-witnesses to the changes which took place on the Louisiana shore line between 1823 and about 1876, the date when complainant's earliest witness was familiar with the locality; and since between 1824 and 1866 there is no record of any surveys of the Louisiana shore line in the vicinity of Willow Point to which the accretion claimed is attached, it is likewise manifestly impossible to furnish documentary evidence showing same, prior to the survey of 1866. However, by comparing the surveys of 1824 and 1866, it is shown that the change in the river east of Willow Point, between the dates of said surveys, at the point of greatest extension, was only 439 yards, in an east-

erly direction. It is manifestly impossible that an avulsion could have taken place at this point between these dates.

A careful examination and comparison of the lines as established by surveys in 1824, in 1866, in 1870, and in 1882 enables us to calculate and show by comparison and deduction that the easterly extension of the Louisiana shore line from Willow Point toward the Mississippi shore was so gradual as absolutely to negative the suggestion of the State of Mississippi that at some unknown and unrecorded time subsequent to 1824 there had been an avulsion whereby Mississippi territory was thrown west of the channel, and that the accretions attached thereto were Mississippi territory.

ACCRETIONS.

Defendant, in its brief on Exceptions to the Master's Report, on page 11 says:

> "Complainant's proof tending to show that the change in the channel of the river between 1823 and 1882, was the result of accretion, and not of avulsion, is supported only by one witness, C. H. West. His testimony is based upon two maps, one made in 1866, and the other in 1870." * * * was a survey of what is known as Hopkins' Island, as it existed in 1869-1870. Complainant's "Exhibit B.B." (R. 148.)
>
> "With these maps as the only facts before him, the witness undertakes to give a history of the change in the river during this period of time, expressing his opinion that the river progressively moved eastward, and that the Louisiana shore line followed it, being built by accretion."

We will let Cap't West answer this question; his testimony, in part, is as follows:

> Now, as the Bend caved eastward into Mississippi the river maintained about the same width at all times. The accretions from the convex side formed just as the caving eat away the bank on the concave side. (R. 144.)
>
> Q. Now, I notice in these points projecting out here, you have got the word "accretion" written on there. Where did you get the data to write that in?
>
> A. By following the charts, as the Mississippi shore receded by caving, and the Louisiana shore followed it up by accretions, the river remained at approximately the same width to whatever position it had. For instance, you take the chart of 1882, of the Mississippi River Commission, shows the accretions out beyond the shore line, the Louisiana shore line of 1824, and beyond the shore line of the survey of 1866. Just a gradual building out. That is characteristic of the Mississippi through the lower valley, that *it maintains about the same width all the way.*
>
> Q. As I understand you the word "accretion" is written in there as a result of your opinion from your study of these maps and charts about which you have testified, and not from any data shown on the government survey as accretions?
>
> A. No, sir; they are shown on the Chart of 1882, following out on Willow Point as Albemarle Bend receded east, and they are shown the same on chart of 1913. Now, as I say, the survey of 1894 only shows the bank lines.
>
> Q. Well, now, Captain, does not the chart of 1882, showing the point that you have got marked "accretions," as composing Island No. 98 in Section 21, and the land south of Section 16 in Section 21?
>
> A. Let me see if I understand you.

Q. The question I asked you, you have the word "accretions" have you, marked in Section 21 and some in Section 17? (R. 155.)

A. Yes, sir; the river having moved eastward.

Q. Now, I want to ask you this. As I understood you you said you got that data from what was shown as accretions in the survey of 1882. I want to ask you if the chart of 1882 did not show that Section 17 was out on the bank; Section 21, or a part of it at least, was a part of Island No. 98, and Section 16; all the north half of the north part of Section 16 was out on the bank?

A. In what year?

Q. In 1882?

A. In 1882 a part of 21; a part of 28 were on the bank to the east of the Mississippi; yes, sir.

Q. And Section 16 and Section 17?

A. Nearly all of Section 16 and a little more than half of 17 were also on the bank east of the Mississippi.

Q. So, if I understand you, if those particular sections were projected or drawn on Exhibit I, and if you used data of 1882, that would show that in 1882 that was land out on the bank?

A. Yes, sir.

Q. Now, going back to my question, then in regard to these accretions put on there, that is your opinion of what happened between 1882 and 1894, and 1894 and 1913, is it not?

A. No; it is a little more than a mere opinion. The chart of 1882 shows accretions beyond the Louisiana bank line of 1866, out for a considerable ways. The chart of 1913 shows accretions going even beyond the Louisiana shore line of 1894. Therefore, the space between those two periods is covered by the chart or the survey of 1913, which shows the accretions throughout. And again, they had to be accretions in order for the river to maintain approximately the same width

throughout all the period of this moving eastward. The volume of the water carried by the river is such that it adjusts the channel to suit the load it has to carry of water. Then, my observations of that land have been quite carefully made since 1898. Prior to 1898 I have been closely observing what the river was doing as I was responsible all that period since '98 for safeguarding against disaster through changes in the river. Now, prior to 1898, and beginning about 1893, I was along that part of the river several times, and my observation was, during that period the river maintained about a given width. Had it been wide and shallow I should have observed it, and had it been wide and shallow the caving would have been slowed up. But being deep and narrow between the bar line and the Mississippi shore was the cause of the rapid caving throughout. So it is not a mere opinion during that lapse of time between the shore lines of 1894 and 1903, or between 1892 and 1894. (R. 157.)

THINGS THAT SHOW THE ACCESSION TO THE LOUISIANA BANK WAS BY ACCRETION.

1st, Complainant's "Exhibit M", being Chart 45 of the Mississippi River Commission Survey of 1882, a small copy of which it attached to defendant's original brief at page 12, shows that in front of Sections 4 and 5 of Willow Point, the bar is highest next to the original bank line of 1824, and that there is a gradual decline to the water's edge. This is shown by the contour line running in regular order from 75 feet elevation at the water's edge to 95 at the bank line.

2nd, If it has been shown that there was no avulsion at this point, through Mississippi territory, that

would be persuasive that the additions were by accretions. At least the additions could not be Mississippi territory.

3rd, It is admitted by defendant, in its original brief, page 12, that between Sections 4 and 5 there had been no change in the Louisiana bank line from 1824 to 1882; and that in front of Section 7 the channel had changed easterly approximately one and a half miles. It had to extend in some way, and as there was no avulsion and no islands formed at this point, the natural conclusion would be that such extension was the result of accretion.

4th, It is shown in R. 144, that the river at this point maintained about the same width at all times. It is further shown that the caving was rapid in Albemarle Bend. For one side to recede and the river to maintain its width, Willow Point would necessarily be added to by accretion.

5th, It is the history of the river that in a sharp concave bend it caves, and on the opposite side, at the convex point it is added to by accretion. The reason is that on the concave side the current is strong, and prevents the silt from settling, while on the convex side there is little or no current, and the silt settles where it strikes the bank and forms accretion.

6th, The testimony of George R. Newman shows the bar to Willow Point, or Newman's Towhead, to have been added by accretion. It is as follows:

> Q. How far was it from the main land to the end of the timber towards the Mississippi River when you can first recollect?

A. How far was it from the end of the timber to the Mississippi River?

Q. From the main land over to where the timber stopped growing?

A. About a mile and a half I reckon across the bar.

Q. How far out would the bar extend, as well as you recollect, beyond the timber, that part that had no timber on it?

A. Well, there was a depression that had no timber on it, and that was very narrow, and then there was a bunch of timber there, and from that out I reckon it was about a mile.

Q. How far was it from what you have termed the main land out to the water's edge, as well as you can recollect?

A. About a mile and a half. Something like that. Maybe a little more, as near as I can remember. I did not pay any attention to it then.

Q. Did or not the bar extend in an easterly or northeasterly direction towards the Mississippi shore after you can first recollect?

A. Yes, sir; it did all the time further over over here.

Q. And got larger and larger every year?

A. Yes, sir.

Q. Was it a continuous bar all the way out?

A. Yes, sir.

Q. Could you walk from the main land at all times out to the river?

A. Yes, sir.

Q. How long did that condition exist?

A. How long did it exist, did you say? How long did it exist?

Q. Yes, sir; how long did it exist during your recollection?

A. Up until '12.

Q. 1912?

A. 1912, when it caved off—cut off. (R. 68.)

Q. Before the cut off in 1912, could you have

walked out over the entire bar to the river's edge?
A. At any time except in high water. Real high water. (R. 69.)

It was the opinion of the Special Master that the physical facts, surveys and plats corroborated the testimony of the complainant, and at the top of page 13 of his report he found as follows:

> "Therefore, without regard to the oral testimony, to be hereinafter referred to, I have no difficulty in reaching the conclusion from the documentary evidence, that up to 1882 the change in the location of the river, and of the boundary line, had been produced by erosions and accretions, and not by avulsions."

Complainant contends that the evidence sustains the above finding by the Special Master.

II.

If defendant failed in its first contention, its second contention is as follows:

> "That Tullos Island did not wash away, but that the channel around the island changed from the west side to the east side thereof, the old channel filling up until the island became connected with the Louisiana shore * * *."
> (Defendant's Brief on Exceptions, page 56.)

Complainant disputes the above contention and claims that Tullos Island entirely disappeared, leaving no Mississippi territory west of the channel at this point to which accretions could attach, making same Mississippi territory.

Did Tullos Island wash away?

WHAT SURVEYS SHOW.

It is admitted that Tullos Island, or Island 98, was Mississippi territory, and that at the time of the first Government land survey, was composed of parts of Sections 20, 21, 28, nearly all of 29 and part of 30, in T. 9 N., R. 8 W., according to what is known as the land survey in the Choctaw Session. (R., 135.) Also see map in Complainant's Second Supplemental Brief, page 52.

There is no dispute of the fact that in 1882, all of this island had washed away, except a part of Section 21, and a small part of 28. See Complainant's "Exhibit M" and map in Complainant's Second Supplemental Brief, page 52.

The survey shows that between 1823 and 1882 Tullos Island, or Island 98, had caved away on its western side, more than one mile, and on the southern part more than one and three-quarters miles, and that the bar on the opposite side of the river, at Willow Point, had advanced at about the same distance. (Complainant's "Exhibit M" and map attached to Complainant's Second Supplemental Brief, page 52.)

This fact is easily determined by taking charts of the surveys of 1823 and 1882, reduced to a common scale, and taking tracings from the 1823 survey and placing same over the 1882 survey.

Such tracing will demonstrate that the caving was all along the western side of the island, but greater at the southern end. This is apparent to the naked eye, from an examination of the surveys. The lower end of the island in 1823 extended west nearly to the center of Section 30, while in 1882, the lower end was more than a quarter of a mile east of the eastern

section line of Section 28, a distance of at least one and three-quarters miles. (See map page 52 Complainant's Second Supplemental Brief.)

This physical fact is a mute, but unanswerable, argument to show that the current of the river was directed against the western side of the island, but more at the lower end.

This would follow, as the evidence shows that the river at this point maintained about the same width. (R. 144).

It follows that Newman's Bar, in 1882, necessarily occupied a part of the place formerly occupied by Tullos Island, and according to the evidence and surveys, the part so occupied was at least from one mile to nearly one and a half miles, while less than one mile in width of Tullos Island was left. (Complainant's "Exhibit M" and Second Supplemental Brief, page 52.) Even all of this was not the original island of 1823, as it had been added to on the eastern part by the partial filling up of the old chute between the island and the main Mississippi bank. The surveys of 1823 and 1882 compared, show this. (See illustration attached to Complainant's Second Supplemental Brief, page 52.)

WHAT PHYSICAL FACTS SHOW.

Until 1894 the caving north of Willow Point was gradual, and had been so for more than fifty years. This is shown by the testimony of I. B. Beard. He said the caving had been going on ever since he could recollect (R., 94), which was fifty years. (R., 56.)

It would follow that the current of the river which was against the southwestern part of Tullos Island in 1882, was gradually brought up more against the

whole western side, and with this more direct force of the current against the island that it would cave more rapidly. The survey of 1894 shows that the northwest corner entirely disappeared first and at the date of this survey the bar from Louisiana had extended over same, while the balance of where the island had been was then in the channel. (Complainant's "Exhibit C" and R. 138, 140, 144.)

It is shown that the territory involved is in the Delta, or alluvial sections of Louisiana and Mississippi, and the evidence showed that the main banks, when the current was against them, washed away with great rapidity, whole plantations caving into the river, in a comparatively short time.

Any islands formed in the river, or added to, or built larger by silt from the river, would likewise disappear with great rapidity when the channel and current was thrown against them.

The channel was thrown against Island 98, or Tullos Island, and also the Island or High Sand Bar adjacent to Island 98, and extending northward, with all of its force, and they would disappear just as fast as the main bank.

There was only a comparatively small part of Tullos Island left in 1882. (See map in Complainant's First Supplemental Brief, page 52.) That much of this small part had disappeared between 1882 and 1892 is certain.

By an examination of the various charts and maps of surveys of this reach of the river, it will be seen that the river gradually swung around from a course a little west of south to a southern course, and then to a southeastern course, thus bringing the river around against the island like the slow circular move-

ment of a searchlight, until the full force of the channel current was brought direct against it. The nearer to a right angle the river strikes the bank, the greater the caving.

Capt. West said—From 1882 the caving (in Albemarle Bend) became more rapid. It was known as one of the most rapidly caving bends on the Mississippi River. (R. 141.)

Then with the channel current, after 1882, almost at right angles against the small strip of Tullos Island that was left after 1882, and it being soft alluvion, it would seem beyond human credulity that it would withstand all the force of the Great River, and stand there like the Rock of Gibraltar to be added to by accretions on its western side until it attached to the Louisiana shore.

The Special Master has expressed this idea so forcibly we herewith copy a paragraph from page 37 of his Report, to-wit:

> "Had a very small part of Island 98 remained as claimed by defendant, that part was so insignificant that it is inconceivable that the extensive accretions arising from he erosion of the adjacent Mississippi mainland both northerly and southerly from such remnant of the island (if any remained), attached to that small parcel of land instead of to the extensive bar which moved from the Louisiana shore northeasterly, easterly and southeasterly."

WHAT WITNESSES SHOW.

Testimony of Mr. E. T. Purnell.

He was born in 1866. (R. 259.) He moved to the Purnell Plantation, belonging to his father, and which was on the Mississippi Bank of the river opposite Tullos Island, in 1880. (R. 260-261.)

Q. The W. Purnell place was in the State of Mississippi, was it?

A. Yes, sir.

Q. What water was immediately west?

A. A chute between Island 98.

Q. Where was the main channel of the river?

A. *West of 98.*

Q. How long did you live at the place marked "W. Purnell" on the map?

A. I was there from *1880 to 1897*, in January.

Q. Continuously?

A. Well, a few months may have intervened.

Q. Well, I mean you lived there? (R. 262.)

A. Yes, sir; that was my home.

Q. When you first knew Island 98 you say the deep part of the channel of the river was on the ***west*** side of the Island?

A. Yes, sir.

Q. Next to the Island or next to the Louisiana shore, Mr. Purnell?

A. *Next to the Island.*

Q. When did you first observe the island on the western side caving, if it ever caved?

A. The *first time that I ever crossed the island* to the other bank. I don't know the exact year, but it was in my younger days.

Q. Before you were grown?

A. A long time before I was grown. Probably it was *when I was ten years old.*

Q. It was caving then?

A. Yes, sir.

Q. Do you know whether or not that caving continued?

A. To the best of my knowledge it did.

Q. You lived opposite the island, I believe you said, Mr. Purnell?

A. Yes, sir.

Q. Do you know whether it did or not?

A. I am confident it did. Yes, sir; it did.

Q. It did?

A. Yes, sir.

Q. Do you know whether or not the island ever entirely disappeared, Mr. Purnell?

A. Yes, sir.

Q. Do you know about when it disappeared?

A. Either in 1894 or 1895, during the high water of either one of those two years, but I am not positive. It was during one of those two years, during the high water. But, as I say, I am not positive which.

Q. Did you say that it disappeared or not?

A. It did. (R. 264.)

Later the witness said the Island disappeared in 1893, 1894 or in 1895. (R. 282.)

Q. Then, how did it disappear?

A. It washed out entirely.

Q. There was not a vestige of it left, of any sort?

A. No, sir.

Q. Up to the time of the disappearance of that island,—of the complete disappearance of that island, where was the main channel of the river? (R. 265.)

A. It was to the *west of the island.*

Testimony of Cap't Joseph V. De Lahunt.

He was a witness for complainant. He was 70 years old in 1926.

Q. What is your profession or occupation?
A. Pilot and captain.
Q. Pilot and captain on what waters?
A. From Cairo to New Orleans.
Q. On what river?
A. The Mississippi River.
Q. In what service are you?
A. Working for the Government in the Second District, pilot and captain of a boat.
Q. Headquarters United States Engineer's office there?
A. Yes, sir. (R. 288.)
Q. About what age were you when you became a licensed master and pilot on a boat on the Mississippi River?
A. I got a license in '80—I think it was either '79 or '80.
Q. Either 1879 or 1880?
A. Yes, sir. (R. 289.)
Q. I point to you on that map an island indicated as Island No. 98. Please state whether or not the boats on which you acted as master or pilot during the whole of this time passed up and down by Island No. 98?
A. Yes, sir; passed *to the west side of 98.*
Q. In the discharge of your duty as a pilot, state whether or not, as the case may be, it was your duty to observe and note changes *in the islands, bars and the channels of the river?*
A. Always. Always take note. * * *
Q. What became of Island 98?
A. It disappeared *absolutely.*
Q. Was any of it at all left?
A. No, sir; *not a bit.*
Q. What was the occasion for it to disappear?
A. The caving banks. It started to cave at the head and just kept on chipping away and caved all away. In 1897 *I run right over the top of the island with a loaded steamboat.*
Q. Over the top of what?

A. Over the top of the place where 98 was.

Q. Was there any trees to indicate where that island was at that time?

A. No, sir; not at that time there was not.

Q. What became of them?

A. They *just went to China, I reckon.* (R. 292.)

Q. When Island 98, which you say disappeared, was in existence, *where did the channel of the river run* with reference to the island *and Hopkins' Tow head you refer to?*

A. It run to the west of the island when it was there.

Q. Which island?

A. Island 98.

Q. West of Island 98?

A. Yes, sir.

Q. With reference to Hopkins Island, or Hopkins' Tow head, did the channel run east or west of that?

A. *Run east of it.*

Q. East of that?

A. Yes, sir.

Q. The channel, as I understand your statement, run east of the Hopkins' Towhead and to the west of Island No. 98, is that right?

A. Yes, sir.

Q. And between the two?

A. Yes, sir.

Q. On which side of Island 98 did the caving take place, Captain?

A. On the outside—*the west side.*

Q. The west side?

A. Yes, sir.

Q. The west side of Island 98, as you say, chipped away,—as it chipped away, what changes, if any, took place on the Louisiana side of the stream?

A. Well, it filled up over there. (R. 293.)

Q. State whether or not during the process

of the caving of Island 98 was it easy or difficult to land your boat there?

A. You could not land at all. I never did land at Island 98 in my life.

Q. Why could you not?

A. Because of the snags and the trees and things there. It was dangerous to land there.

Q. A boat could not land there?

A. No, sir. A boat could not land there without taking big chances on sinking.

Q. What do you mean by these snags and trees?

A. Big timber in Island 98.

Q. Big timber on the island?

A. Yes, sir.

Q. How would they get into the river?

A. They caved in.

Q. And in '97 or '98 I understand you to say that the island entirely disappeared?

A. Yes, sir.

Q. And there was not a vestige of the island left, as I understand you, Captain?

A. Nothing left of it. If there was I ought to have seen it. I was running up and down there *six times a week.*

Q. Prior to the disappearance of Island 98 you state that the main channel of the Mississippi River *was to the west* of that island?

A. Yes, sir.

Q. What was between that island and the Mississippi shore on the east?

A. There was no channel there at that time. * * * There was no channel there until the island gave away.

Q. Was there a chute there?

A. There was a *little* chute up in there; yes, sir.

Q. What was the width of that chute? (R. 294.)

A. Oh now, it was not very wide.

Q. Was it *navigable for large boats?*

A. No, sir.

Q. Could small boats go up there at any stage of the water?

A. *Not far.* It was all closed up at the head of it. You could land at the foot of it. That is where the landing was, right at the foot of it,—Chotard Landing, they called it, at the foot of Island 98. Island 98 never was a very large island. (He first knew it in 1880.)

Testimony of Captain Chas. H. West, based in part on his personal knowledge, and on the Surveys and Charts of the Mississippi River Commission.

Captain West stated:

"Beginning about 1893, I was along that part of the river (Albemarle Bend) several times, and my observation was, during that period, the river maintained about a given width". (R. 156.)

(The island was evidently gone then.)

Q. Have you stated that Tullos Island, as it existed in 1882, entirely disappeared? If you have not I will ask you the question. Did it entirely disappear? I will ask you the direct question. Subsequent to 1882 did what is (R. 143) or what was known as Tullos Island or Island No. 98, entirely disappear?

A. Yes, sir; it entirely disappeared by the caving, the Bend moving eastward until in 1913, when the survey of the Mississippi River Commission showed the main shore line to be about a mile and a quarter east of the eastern shore of Tullos Island as it had existed. Yes, sir; it has taken Tullos Island, and came the full length of Tullos Island and still further eastward in Mississippi.

Q. Well then, you will now state positively that no part of Tullos Island, as shown here in 1882, is left?

A. Yes, sir; as this Bend progressively eat away the main shore and went eastward, the accretions on the west side followed it up continuously, survey after survey. *Now some of the Commission's charts will show the shore lines* on both sides *every* year. A multiplicity of them would be shown as the river progressed. But these lithographed charts are not made *every* year. They are only made at long periods. They are very expensive to get up, and they show the river for long periods of say from ten to fifteen years apart.

Now, as the Bend caved eastward into Mississippi the river maintained about the same width at all times. The accretions from the convex side formed just as the caving eat away the bank on the concave side.

Captain H. M. Marshall.

He was a witness for defendant.

The last time apparently, that he saw Tullos Island was in 1890. He said:

> "I can state of my personal knowledge that in 1890, four years before the survey was made (the survey of 1894), that Island 98, or Tullos Island, (nor) the island above it, had not been washed away, but were still in existence." (R. 173-174.)

Captain Marshall knew the size of Tullos Island in 1882, and he knew its size in 1890. The defendant did not show what size it was in 1890. Captain Marshall was their witness. Would not the presumption be that had there been much of the island left in 1890, the defendant would have shown it?

From the worksheets of the 1894 survey, Captain Marshall gave it as his opinion that "The island could not have caved away." This opinion is not sustained by the documentary evidence (R. 173), nor by the most credible eye witnesses.

Captain R. E. Foster, Defendant's Witness.

Mr. Foster "*lived right across the river from the island.*" (R. 208-209.)

He had lived there since 1882.

He lived on the Mississippi side of this river; was a member of the Mississippi Legislature. (R. 209.)

Later he said, the river was not at first between his place and the island, but is now. (R. 212.)

Later he said he did not know the size of the island, when he first knew of it.

That it was just across the river from his *lower place.*

No this home place, but his lower place. (R. 214.)

Later he said the island was in front of both his places. (R. 215.)

He did not know how long it was, how wide it was, nor anything about the size of it in 1882. (R. 215-216.)

He had no interest in it, whatever.

He knew it was there then and is now. (R. 216.)

He did not know how much of the island was left.

The island is across the river from his place, about two miles.

He could only tell that some of the island was left by looking across and seeing the timber, a distance of two miles. (R. 217.)

This timber he saw was on the island exactly west from his place.

But he could not tell whether the timber was on the island or the main Louisiana shore. (R. 218.)

Mr. Purnell said Mr. R. E. Foster lived on the Cotton Wood Plantation, 10 or 12 miles (from Island 98). He lived there continuously. (R. 265.)

He very seldom saw Mr. Foster, and he did not visit his section (opposite Island 98) often. (R. 266.)

By examining the chart 45 plaintiff's "Exhibit M," (Defendant's Brief page 12), that two or three miles above Tullos on the Mississippi shore, would make it impossible to look *exactly west* and see Island 98, as said island, from said point is southeast.

The only thing that could have had any appearance of an island two miles west with nothing but the river intervening is Newman's Towhead.

It is therefore clear, that Mr. Foster's testimony is not entitled to much weight. The Master's comment is clearly borne out that "his testimony as a whole indicates a very hazy recollection and lack of careful observation."

Lawrence Towns' Testimony.

The Special Master has so completely shown the incredibility of the testimony of this witness, that we copy his statement relative thereto with full reference to the Record. It is as follows:

> "Lawrence Towns testified in substance that he went to live at Chotard in February, 1880, when he was thirteen years old; that he knew Island 98; that some people called it 'Scruggs' Island' that it was right in front of Chotard and ran below there near the Warren County line; it extended nearly to Brunswick (R., pp. 220, 232.) For ten years he was a roustabout

on Mississippi River steamers beginning when he was about 18 years of age. (R. page 232.)"

"He said that a part of Scruggs Island had been there ever since he had been at Chotard (R., pp. 221-222); that that was the same land as Newman's Towhead (R., p. 239). After the cut-off of 1912-1913 he leased Newman's Towhead with accretions from Rufus F. and Andrew B. Learned. The property was described in the lease as containing about 2,000 acres more or less, known as "The Newman Towhead with accretions, and being a part of Bell and Willow Point Plantations," in East Carroll Parish, Louisiana (R. pp. 226-228). He did not cultivate Newman Towhead but kept 800 or 900 hogs there. He could not say whether Newman Towhead started out from the Louisiana shore but in the next breath said Newman Towhead was never attached to the Louisiana shore by sand bar (R. pp. 228, 237) although he later admitted that the sand bar started out from the Louisiana shore and went toward the Mississippi shore (R. pp. 230-231). He said that the river came through and left the Towhead on the east side towards Mississippi (R. p. 229), and that at the time he was testifying, Newman Towhead was on the Louisiana side of the river (R. p. 237)."

"This witness appears to be of a low grade of intelligence. His testimony is self-contradictory, incoherent and difficult to understand. His is the only evidence in the case that tends to show that Island 98 ever extended southerly to the vicinity of Brunswick or the Warren County line. Complainant's Exhibit M shows the most southerly point of Tullos Island in 1823 was about one mile northerly of the Warren County line. The same exhibit shows that the southerly point of the island as located by the 1882 survey is about a quarter of a mile northerly from Chotard. It will be recalled that the actual survey or

Chart 46 of the Mississippi River Commission shown on Complainant's Exhibit M was made in 1879-80, and the southerly point was caving at that time. It is entirely clear that at the time this testimony was taken, Newman Towhead was east of the river and not on the Louisiana side (Chart 47, Mississippi River Commission 1913-1915; Complainant's Exhibit F; Defendant's Exhibit 6-B).

At one time he stated that he was uncertain whether Newman Towhead started out from the Louisiana shore, but at another time he stated that it was never attached to the Louisiana shore."

Testimony of Etna J. Albrittain.

The first visit of this witness to Island 98 was in July, 1912, which was after the avulsion during the high water of 1912.

He went over what he claims was sections 20, 21 and 28. (R. 241-242.)

By reference to "Exhibit M" defendants original brief page 12, it will be seen that the original section 20 and most of sections 21 and 28 that had ever been a part of the Island had caved away.

By reference to complainants "Exhibits C, D, E, H and M", Survey of 1882, being Sheet 17 of the plats of the said Commission, also shown on Chart 45 of the Mississippi River Commission, there is shown in red solid lines the shore lines of both Louisiana and Mississippi, and in broken red dotted lines, the extension of the bar line connected with the Louisiana shore, according to the survey of the Commission in 1894.

Asked whether he knew of his own knowledge whether Tullos Island had all caved away, he evaded a direct answer, to the question.

He said the largest tree that he measured was 10 feet and five (5) inches in circumference. (R. 252.)

He saw larger trees before he had the survey made but did not measure them. (R. 253.)

Q. Then, if you did not measure other ones how could you tell it was larger?

A. Easy enough.

Q. Are you trying to show that this timber is larger on the island or it is smaller?

By Mr. Butler: He is not trying to show anything. I don't think that is a fair question.

By the Witness: I am trying to answer questions merely.

By Mr. Dale:

Q. Are you interested in this litigation?

A. Certainly I am.

Q. Did you go there to hunt small trees or large ones?

A. I have not been hunting any trees at all.

Q. Why did you measure this cottonwood?

A. Just *because I wanted to see how big it was.*

Q. You did not measure it for the purpose of using it as evidence in this case?

A. I measured it because *I wanted to see how large it measured.*

Q. Yes, sir: my question was, you did not measure it for the purpose of using it as evidence in this case? Or were you hunting for those trees just as a mere matter of curiosity?

A. *I measured it as a matter of information.*

Q. I will repeat the question. Did you or not measure it for the purpose of using the measurement as testimony in this case?

A. *Not purely; no.*

Q. Did you do it at all for that purpose?

A. *I had not had an investigation sole in mind.*

Q. Then, if you did not measure it for the purpose, of using it as evidence in this case, why did you measure it?

A. I told you I measured it *to see how big it was.*

Q. Just simply to see how big—as a matter of idle curiosity to see how big it was?

A. *And for information, as I told you.*

Defendant, in his Exception to the Master's Report, on page 7 says:

> "As stated by the Special Master, in his Report on page 18, 'the testimony in respect to the total disappearance of Island 98, prior to 1894, is very conflicting and difficult, if not impossible to reconcile.' "

Let us begin where the defendant left off and see what else the Master said.

> "Upon the whole, up to 1894 the clear weight of the evidence, both *documentary* and *oral*, is to the effect that the river channel had moved gradually from its position in 1824 to that in 1894; that this change had been produced (page 36) by erosion on the Mississippi shore and accretions to the Louisiana shore; that when the 1894 survey was made all of Island 98 had washed away and the river had cut into the Mississippi mainland a substantial distance; that accretions to the Louisiana shore had followed the river channel and covered the eroded Mississippi territory, including Island 98, up to the Louisiana bar line of 1894 as shown on the survey of that year." (Page 37.)

The Master further found on page 37 as follows:

> "Had a very small part of Island 98 remained as claimed by defendant, that part was so insignificant that it is inconceivable that the extensive accretions arising from the erosion of the adjacent Mississippi mainland both northerly and southerly from such remnant of the island (if any remained), attached to that small parcel of land instead of to the extensive bar which moved from the Louisiana shore northeasterly, easterly and southeasterly.
>
> I, therefore, find and so report that the premises in controversy were formed by accretions to the Louisiana shore between 1823 and the avulsion of 1912-1913."

TULLOS ISLAND DIVIDED INTO TWO PARTS.

Defendant, in its Brief on Exceptions to the Master's Report, on page 3 says:

> "Tullos Island, or Island 98 is shown divided into two parts."

On page 13 it says, referring to Mr. Purnell's testimony,

> "What this witness called Hopkins' Island is shown conclusively by him in referring to map Complainant's 'Exhibit H' to be *Upper Tullos Island.*"
>
> On page 43 the brief says Cap't Marshall states (R. 175) "The mail boat," etc. * * * and then proceeds "showing the width of the chute from the levee over to *Upper Tullos Island.*"

On same page nearer the bottom, he refers to Lower *Tullos Island.*

What Cap't. Marshall did say was as follows:

> "While we were there * * * a boat passed down the main channel, on the western side of both islands."
>
> "There were trees growing on both islands, large cottonwood and willow. There was a swift current flowing down between *the two* islands. * * *"

Cap't. Marshall further said:

> "Exhibit 3, Sheet 17 of the Mississippi River Commission shows that there was *another* island on the Mississippi side of the Mississippi River, Island No. 98, which is the same thing as Tullos Island, the island above that, up stream, on the Mississippi shore."
>
> Q. Was the island up above that, below the head of Island 98?
>
> A. Yes, sir; below the upper end. They overlap. Those two island overlap a little."

By referring to Complainant's "Exhibit G", a small copy of which defendant has attached to its original brief just in front of page 11, it is shown that the original Tullos Island extended very little north of the northern line of Sections 20 and 21 at the time of the original survey in 1823. By referring to Chart 45 of the Mississippi River Commission, defendant's "Exhibit C"; also "M"; also Sheet 17 of the plats of the Mississippi River Commission, a small copy of Complainant's "Exhibit M" being attached to defendant's brief at page 12, it is shown that the island or sand bar above Island 98 extended in a northwest and west direction from about the center of the east line of Section 20 to the west line of Section 13 a distance of about three and a half

miles, extending up the river for at least three miles north of the northern part of Island 98, and overlapping Island 98, and extending south of it about a half of a mile, and east of it about 500 yards.

Not a witness that testified said that this upper island was ever a part of Tullos Island. The defendant evidently relied on Cap't Marshall's testimony to show that there was an Upper and a Lower Tullos Island; but, Cap't Marshall, speaking of Island 98, referred to the other island as *another* island above Island 98. If there was another island, it could not be Island 98. It could not be *another* island, and at the same time be Island 98, unless by some mysterious influence it had the characteristics of a "Dr. Jekyll and Mr.Hyde."

The wish of the defendant for two islands, that there may be a second, after the first is shown to have been destroyed, cannot, in a court of justice, take the place of evidence.

THE PROBABLE WAY THE ISLAND AND SAND BAR ABOVE 98 WAS BROUGHT INTO EXISTENCE.

The testimony of Captain West shows as follows:

> Q. Explain what you mean in connecting Hopkins' Island with Willow Point.
>
> A. What I mean by its connection with Willow Point is the distances and direction from a given point on the Louisiana side of the original survey on the Louisiana side with Hopkins' Island in order to locate it in its proper position to the Louisiana land survey. This chart shows the Mississippi shore line to be about one mile east of where it was in 1823, and of that part of Tullos Island which lay in Sections 20, 29 and

30, had crept into the river, and only a part of that which lay in section 21 and 28 existed at that time. In 1870, at the time Hopkins Island was sectionized as a part of Louisiana, the main shore line opposite Hopkins Island was about *3,000* feet further inland than it was at the time of the Commission's survey of 1882 and a channel of the Mississippi River in 1870, passed between Hopkins' Island and the main shore, as it existed in 1870, as is shown by the Government land survey chart of Hopkins' Island, marked "Exhibit BB." After 1870 the river in the bend northeast of Willow Point began to move in a southwesterly direction and built out the Mississippi shore a distance of about *3,000* feet, so that in 1882 the Mississippi shore line of the river *was along what had been the eastern boundary of Hopkins Island*, and the channel of the river, at that date, 1882, was over the position that had been occupied by Hopkins' Island in 1870, having destroyed all of the island except a very small part of the southwestern extremity of the same. (R. 140.)

This will be more clearly seen by Complainant's "Exhibit H," showing the survey of 1882 a small copy of which appears in defendant's original brief at pages 60-61.

You will note from this plat on which Hopkins Island is shown that the Mississippi shore line had extended west to the eastern line of Hopkins Island, and all of Hopkins Island, had been cut away by the river except a little corner in lots 3 and 5, and that such little corner had been united with Newman's Towhead, or if that too had been cut away that the Newman's Sand bar extending out from the Towhead, covered the place where this part of Hopkins Island had been.

This survey of 1882, the map being shown at pages 60-61, of defendant's original brief, shows that the island defendant called upper *Tullos Island*, was in fact a high sand bar, which had greatly extended by accretions to the west, until the whole bar was about 4 miles long.

Captain West's testimony was to the effect that as the river extended to the south cutting away the northern part of Willow Point, and above the accretions to the Mississippi shore, followed it, and this is no doubt what formed the sand bar. (R. 140.)

Defendant also shows this on its "Exhibit 6 F", of survey of 1882 attached to page 46 of its original brief, showing on the sand bar 90 feet elevation and the high bar below to which the sand bar attached to be 100 feet elevation. The channel was then about parallel to said high sand bar, but struck the lower part of Island 98 almost at right angles.

Now owing to the fact that said high sand bar was not in existence in 1823, (See defendant's Exhibit 2 attached to its original brief after page 10) we think it demonstrates that this high sand bar which defendant calls upper *Tullos Island* was not in existence until some time between 1823 and 1882.

The map at pages 60-61 of defendant's original Brief, and Captain West's testimony R. 140, shows that the Mississippi shore line in 1882, had extended to the eastern location of Hopkins Island in 1870.

DID THE RIVER PRIOR TO THE 1894 SURVEY, CHANGE ITS COURSE FROM WEST OF ISLAND 98 TO THE EAST THEREOF, LEAVING A PART OF THE ISLAND INTACT?

Plaintiff's "Exhibit C", shows the survey of 1894, superimposed on the chart of survey of 1882, a small copy of which is attached to complainants 2nd Supplemental Brief, at page 53, and a larger copy is also attached to defendant's original Brief at page 39.

This same survey is shown on Complainant's "Exhibits C, D, E, F, H, I and M", and Chart 45, also Sheet 17 of the Mississippi River Commission Plats. (R. 140-148-152-153-160.)

Capt. West, referring to Complainant's "Exhibit C", said:

> A. This chart shows the Mississippi River as it existed in 1882, in black lines and symbols. There has been drawn on this chart, in red lines, two banks of the Mississippi River, made from a survey by the Mississippi River Commission in 1894. These red lines were superimposed upon this chart of a survey of 1882 by the Mississippi River Commission. In other words, these red lines were put there by the Commission in the central office.
>
> Q. I note some red, broken lines on this same map, Captain West, and I will ask you what they represent?
>
> A. On this chart is a broken red line. These broken lines represent the edge of the bar at the time of the survey, all of which is explained in print upon the face of the chart.
>
> "Exhibit D" is the same as "Exhibit C" with the addition of the shore and the bus lines of the Commission's survey of 1903. (R. 138.)

By examining "Exhibit C" and "Exhibit M" you will see that parallel of latitude 32° 37′ crosses Willow Point at about the middle of Section 4; the sand bar and accretion to Willow Point leaves from against the main shore line of the land surveyed in 1824, and later known as Willow Point; that this bar line extends from said point in a course slightly north of east, and strikes and crosses the sand bar which was above Tullos Island, crosses it and the chute beyond, and extends some distance into what was Albemarle Plantation in Mississippi, owned by John Chilton, then curves to the south, cutting off the northwest corner of what was left of Tullos Island in 1882, and extending in a southwest direction, to just in front of Chotard Landing, about a half of a mile below Tullos Island as it existed in 1882, and continuing on down, say 300 yards from the Mississippi shore line of 1882 to Brunswick Plantation a number of miles below Island 98 as it existed in 1882.

Another red line representing the shore line of Mississippi, in 1894, crossed over into what was Louisiana in 1882, just West of Edgewood Landing, and ran through what was Louisiana Plantation in 1882, again striking the river as it existed in 1882, at what was Pecan Grove Landing in 1882, some distance above Willow Point. It crossed the river just above what was Duvall's Landing in 1882, and ran through Ingomar, of C. Smith, Albemarle, Higgins, Purnell, Ingomar of R. O. Brown, Kiger, and reached the location of the 1882 river, and Terrapin Neck Cut Off, considerably below Brunswick Landing, thus placing within the river a considerable part of what had been Mississippi territory in 1882. This shows that the cutting away of Mississippi territory not

only extended some north of Tullos Island as it existed in 1882, but for a much greater distance south.

This bank line of Mississippi and bar line of Louisiana places nearly all of the location of Tullos Island as it existed in 1882 in the channel of the Mississippi River, as it existed in 1894 and the balance covered by accretions to Louisiana.

Defendant, in its brief on the exceptions to the Master's Report, page 42, says:

> "Complainant's 'Exhibit C', Mississippi River Commission Sheet 17, is merely a small scale 1 inch equal to 1 miles, for *non-technical use*, made by reduction from charts 45 and 46 of the Survey of 1882, on a scale of 1 to 20,000, which is a little more than 3 times larger than the smaller sheet."

It is true that the scale is a little more than three times smaller than the larger maps, and there would not be room on the smaller map to go into all the details that could be placed on a larger map; but there is not the slightest reason why any competent person could not delineate correctly on the smaller map, the bank lines and the bar lines. And if, in 1894, nearly all of Island 98 was in the channel of the river, the Mississippi River Commission, which superimposed the survey of 1894 on the plat of 1882, knew at the time whether Island 98 was in the channel, and if they so show on a plat made at the time, it seems entirely reasonable to conclude that they knew what they were doing, and that while the results obtained from their work sheets were fresh in their minds, that they could show same on a plat, as nearly correct as is possible.

They certainly could do so more accurately than some one else, who had not seen the bar lines on each side of the river, and who attempts 32 years later to take those work sheets and determine same.

The Commission certainly knew, at the time of the survey of 1894 whether Island 98 had entirely disappeared, and whether the bar line from Louisiana had extended over a part of the place occupied by Island 98 in 1882.

More certainly must this be true when the Commission superimposed the result of the findings of the Survey of 1894, on top of the Chart of 1882.

This superimposed chart of 1894, on that of 1882, is equivalent to the written testimony of the entire surveying staff of the Mississippi River Commission, that all of what had been Island 98 in 1882, had disappeared, and that most of the 1882 location of the island was in the channel of the river in 1894, and that the location of the small part not in the channel in 1894, had been covered by the extension eastward of the sand bar from Willow Point. If the superimposed chart does not mean this, then the Commission made a mistake in making their chart.

Captain West, the civilian engineer, member of said Commission, has told you no mistake was made, and he said he could say positively that Island 98 had entirely disappeared at the time of the Survey of 1894.

If such testimony as the above needs any corroboration, it would seem that two disinterested witnesses, such as Mr. Purnell and Cap't De Lahunt, who both swear positively they saw the island as it disappeared, one of whom lived right in front of it, and the other saw it six times a week, would certainly be a sufficient corroboration.

By an examination of the chart under discussion, the survey of 1894, it will be seen that most of the upper part of the sand bar above Island 98 was in the channel of the river in 1894, and that all of it south and west of the river had disappeared and the place it occupied in 1882 had been covered by the sand bar extending out from Willow Point, Louisiana.

It will further be seen that a small part of the sand bar, just south of Dunbarton Landing, Mississippi, was left on the Mississippi side of the river, and in 1894 was Mississippi territory, and still is Mississippi territory, unless it has since diappeared.

Defendant's contention, as shown by his Exceptions to the Report of the Master, on page 7 thereof, is to the effect—

That between 1882 and 1894, the river left its channel on the west side of Tullos Island, and went around north of what was left of Tullos Island and came down the old chute east of it, scouring out the chute, and making a new channel there.

Is this even plausible?

In 1882, there was little left of the original Tullos Island, probably not one-fifth. The caving was more rapid after 1882. In 1890, when Cap't Marshall last saw it, it must have been cut away to a very small strip. The channel from 1882 was constantly moving further east. Therefore, in the latter part of 1892, ten years later, the channel, as it existed in 1882, had probably moved east into the eastern part of Section 21.

For the theory of defendant to be correct, the river must have left its deep channel just west of the little

strip left of Island 98, run out east a little distance at the north end, and forced its whole channel down through the little chute, east of 98, and to have at once turned a little west of south, scoured out a new channel, without disturbing that little strip of 98.

Would it not take very convincing evidence to persuade any court to believe that such thing happened?

When a channel passes from one side of an island to the other, the principles of avulsion apply.

One alleging avulsion, or a change in the river affecting the boundary line, must prove it, whether complainant or defendant.

See cases cited in defendant's brief in opposition to the Master's Report, at pages 52 and 53, shown in Syllabus in this brief.

Defendant, having set up this change or avulsion, as a special defense, must prove same by a preponderance of the evidence.

WERE NEWMAN'S TOWHEAD AND TULLOS ISLAND THE SAME, OR WERE THEY DIFFERENT PROPERTIES?

Newman's Bar and Tullos Island.

Is it true, as alleged by defendant, that what complainant calls Newman's Towhead is in fact Tullos Island, in paragraph five, sub-paragraph five, of its answer?

Complainant contends such is not the fact.

The evidence clearly establishes that, after the disappearance of Tullos Island, or Island 98, Newman's Towhead built up on Newman's, or Willow Point Bar. (R. 25 to 29, 268, 269.)

If Tullos Island and Newman's or Willow Point Bar existed at the same time, and were distinct properties, on opposite sides of the river, and Newman's Bar never disappeared, but still exists, then defendant's contention in this regard is unfounded.

1st. Did they both exist at the same time?

2nd. Were they on opposite sides of the river?

3rd. Did Newman's or Willow Point Bar ever wash away?

1—*Did Both Exist Simultaneously?*

There is no dispute that Tullos Island existed in 1882. Captain Marshall says there was some of it there in 1890. (R. 173.)

Newman's or Willow Point Bar existed at the same time.

Mr. Beard said at the earliest time he could recollect (1876) Newman's Bar (on Louisiana side) had extended out from the mainland a mile and a half or two miles, or something like that, and continued to grow each year afterwards (R. 87). A towhead subsequently formed on this bar, and grew year by year, getting *higher and higher.*

Defendant's Original Brief, page 12, admits that the bar had extended eastward one and a half miles in 1882. (See R. 86, 103, 259, 269.)

2—*Were Tullos Island, or Island 98, and Newman's Bar on Opposite Sides of the River.*

It is admitted that Tullos Island, or Island 98, was in the State of Mississippi, on the east side of the

river; Newman's Bar on the opposite side of the river from Tullos Island, or west side. (R. 27, 52, 53, 89, 104, 105, 238.)

3—Did Newman's Towhead Wash Away?

Newman's Towhead never washed away. (R. 27, 30, 52, 68, 69, 70, 105, 106, 108, 109.)

We submit that there can be no doubt that Newman's Bar and Tullos Island existed at the same time, from prior to 1880 until about 1893; that they were *distinct properties, one on one side of the river* and the other on the opposite side; that Newman's Bar, attached to Willow Point Plantation in Louisiana, was Louisiana territory. If Newman's Towhead existed prior to 1912 it could not have washed away, as it was on the convex bank of the river.

The surveys show that what was a bar attached to Willow Point extended and covered a large part of the place formerly occupied by Tullos Island, or Island 98, in 1823.

It is certain that the bar and towhead did not cave away prior to 1912. It is certain it did not do so afterwards, and therefore still exists. If this property is Tullos Island, what became of Newman's Towhead?

ERROR OF COUNSEL FOR COMPLAINANT.

Cap't. West, speaking of the survey of 1894, said the survey did not take in the topography. It only took in the change in position of the river alone, and the survey was platted on the Charts of the 1882 Survey. (R. 151.)

It was something of a re-survey, (not) a general

survey with all of the details of topography, as they were merely studying the changes that had taken place in the river itself, and that was platted in red lines (on 1882 Chart) so as to bring it out boldly.

From this testimony, counsel for complainant understood that the topography even between the river banks had not been taken.

After complainant received Defendant's Original Brief, counsel went to see Cap't. West, to ascertain whether they were mistaken. He informed counsel that they were mistaken.

Counsel for complainant then took a written statement from Cap't. West, which was inserted in Complainant's First Supplemental Brief, pages 28, 29 and 30.

In January, 1929, at the hearing before Special Master Haight, counsel for complainant requested permission of the Master to take Cap't. West's testimony, whereupon counsel for defendant agreed in writing as follows:

> "That the questions and answers of Cap't. Chas. H. West, as shown on pages 28, 29 and 30 of Complainant's *First* Supplemental Brief, be received in evidence herein, with the same effect as if he had been testifying as a witness." (Second Supplemental Brief, page 30.)

Complainant refers the court, for these answers of Cap't. West to its First Supplemental Brief, pages 28, 29 and 30, instead of repeating them here.

ELEVATIONS ON WORK SHEETS REFERRED TO BY CAPTAIN MARSHALL.

Referring to Captain Marshall's testimony, Exhibit 4-A, 4-B, 4-C, giving the detail tracing of the United

States Engineers' survey of 1894, he lays stress on the fact that, in the upper right-hand corner of the sheet, contour lines are shown, indicating a height of one hundred and ten (110) feet, Memphis datum, and that on said place is marked "Willows."

In his Exhibit 4-D, he has shown these contours, but in place of the word "Willows" he has substituted the word "Timber," which is an apparent alteration of the work sheet from which Defendant's Exhibit 4-D is said to be made up. This would be misleading, for the reason that "Timber" conveys the idea of large trees. Referring again to Exhibit 4-A, B, C, in other locations on the same work sheet, appear the words "Switch Willows," "Willows," and "Large Willows." The words "Large Willows" will appear on what is seemingly the older or higher bank. Had the timber, on the high points now being discussed, been large timber, the engineers' would presumably have so marked it, as they did in other places. On what is undoubtedly the old bank, being the shore line of 1882, timber is described as "Willow" and "Cottonwood," indicating that the word "Willows" is used usually for the smaller or younger timber growing on the bars. This interpretation is further sustained by Chart 47 (Complainant's Exhibit F), in evidence where the heavier shading, indicating large timber, is marked "Willow" and the light shading, indicating small timber, is marked "Willows." Chart 45 of the Mississippi River Commission, being Complainant's Exhibit E. E., will show Tullos Island as being covered with oak, cottonwood and hackberry and shown by the shading to be large timber. If defendant's contention were true that the high ground referred to and claimed by him to have been a portion

of Tullos Island that had not caved away, this work sheet would doubtless have shown in place of the word "Willows" the words "Oak," "Cottonwood," and "Hackberry," and would have shown it to be large timber, instead of small timber, as indicated by the use of the word "Willows."

The above facts indicate that Captain Marshall's deduction is wrong, and that what was once "Tullos Island," or Island 98, was completely washed away, the channel of the river having swept completely over what was the location of the island and eastward thereof; that the sand bar from Louisiana shore continued to build out and build up high toward the outer end, and that "Willows" did spring up on this higher ground, and, as they grew and the current of subsequent high waters covered this point, the slackening current, because of the willows, caused silt to be further deposited and the process of making higher ground was continued thereby, and that said location is what is shown on Chart 47 as Newman's Towhead, being Exhibit F of complainant, and is not Island 98.

It may be further noted that the high ground claimed on Exhibit 4-D to have been Tullos Island in 1882 extends, according to said exhibit, about a third of the way across what said exhibit shows to have been the channel of the river in 1882 and across the thalweg at that time. This deduction from the survey and contour lines of 1894 would place a portion of the land that is claimed by defendant to be Island 98 continuously since 1823 to be west of where said island is shown by his exhibit to have been and across where the thalweg of the river was in 1882.

TIMBER.

Virgin Timber on Island 98

That at the time of the Survey of 1882 by the Mississippi River Commission the trees on Island 98 were *gum, hackberry, ash, cottonwood, virgin timber,* one tree 7 or 8 feet through. (R. 262-263). That the timber was virgin timber on Island 98 is also shown by the Chart of 1882, introduced in evidence herein, and the

Testimony of Capt. C. H. West and Chart 1882. (R. 151.)

Timber on Newman's Towhead, cottonwood and willow, which grows principally on newly formed accretions.

The timber on Newman's Towhead was nearly all cottonwood and willow, and it grew very rapidly. This is shown by the following testimony: (R. 26, 27, 32, 39, 52, 53, 69, 71, 72, 75, 87, 88, 89, 100, 104, 105, 109, 124, 125, 126.)

III.

CLAIM ON DOMINION AND SOVEREIGNTY OF MISSISSIPPI WITH ACQUIESCENCE OF LOUISIANA.

Defendant claims it should have a decree in its favor, establishing its title to the property because of its long alleged possession and its exercise of Sovereignty and dominion over same, and complainant's acquiescence therein.

Two things must be established by defendant to entitle it to a decree on this point.

1st. Long continued, exclusive possession, and the exercise of exclusive sovereignty and dominion over the territory in dispute.

2nd. Knowledge of such possession sovereignty and

dominion by complainant and its acquiescence therein.

If either fail the rule does not apply.

Defendant alleged in paragraph six of its answer, that at all times since 1817, said lands have been *claimed* by the State of Mississippi, have been *assessed* with taxes by the State of Mississippi; *and the owners thereof have at all times recognized the sovereignty of the State of Mississippi thereto.*

This paragraph, taken in connection with the allegation in the same paragraph of the answer, that the land in dispute *has been Mississippi territory since the organization of the State in 1817,* necessarily means that *the Mississippi owners,* or those claiming title under the State of Mississippi, have at all times *recognized the sovereignty of the State of Mississippi.* (*This could not bind Louisiana.*)

There is an allegation in the same paragraph of the answer that not until a short time before the bringing of this suit, did the State of Louisiana *make any claim to said lands.*

This is true in so far as making any claim *against the State of Mississippi is concerned,* prior to the cut off of 1912, as Louisiana was in the actual occupancy as owner of the land in dispute, without any claim whatever from Mississippi, or any of its citizens, there was no reason why Louisiana should make a claim against Mississippi, or its citizens, for something that Mississippi had never *possessed or claimed.*

There is no allegation in the answer that Louisiana, or its citizens *have ever recognized the sovereignty of the State of Mississippi, or acquiesced therein.*

There is no evidence in the record of any fact which would show that Louisiana *recognized the sovereignty* of the State of Mississippi over the land in dispute, or

in any way *acquiesced in its jurisdiction*, or had any evidence of a claim of jurisdiction by Mississippi, until Mr. Etna J. Albrittain, one of those at present claiming ownership, just before this suit was filed, made claim to the land.

The only way the contention that Louisiana has recognized the sovereignty and jurisdiction of Mississippi could have any effect in aiding Mississippi to hold the territory in dispute, would be on the theory that Louisiana had the legal title to the land, but had lost it by permitting Mississippi to occupy the land, and exercise its sovereignty and jurisdiction over same, and by the acquiescence of Louisiana therein for such a great period of time it had estopped itself from claiming said land, or that it had lost same by prescription.

The plea of estoppel by acquiescing in an existing state of facts, is a special defense, and must be pleaded or the courts will not notice such contention.

The same is true of a plea of prescription.

We think, as there are no such pleas in this case, the Court should pay no further attention to same.

It cannot be said that the pleadings have been broadened by the introduction of evidence without objection, as the only evidence that could even remotely be claimed to have such effect is the assessments, tax sales and patents from Mississippi; these could not have such effect, as they were admissible on other grounds. They were admissible as going to show that Mississippi claimed title to the lands, the rule being that where evidence is admissable on any ground, it does not have the effect of broadening the pleadings, by being introduced without objection.

Complainant submits that special issues require spe-

cial pleas, and cannot be injected into a cause solely in briefs and arguments of counsel, as is attempted to be done in this case.

Let us examine the facts as to dominion, possession and control of the territory in dispute.

To keep the court from getting the facts confused on this particular issue, we call attention to the fact that Tullos Island, afterwards called Island 98, once existed; that it was under dominion, possession and control of Mississippi and was Mississippi territory. Mississippi contends this island never disappeared, but after washing away considerably, the river ran around it, and it then made by accretion out in the old bed of the river until it connected with the Louisiana short. If this contention has been established, then Louisiana never had title, and the question of Louisiana losing its title by permitting Mississippi to take and maintain possession and control, could not arise; but if Louisiana's contention that the island entirely washed away, and that the accretions to Louisiana have extended out and over the location where the said island once existed, then there could be no grounds for the contention that Louisiana had lost its title by acquiescing in the possession, dominion and control which Mississippi had taken of this Louisiana accretion, *as it never any possession of it.*

The question then, on this particular issue, for the Court to decide is:

Did Mississippi Take Possession and Control of This Accretion, with the Acquiescence of Louisiana.

Let us examine the record for the facts.

Mr. I. B. Beard, (T. B. Beard in Record) said: "I had never heard of any part of this land being claimed

by Mississippi *before I was a witness in the case.* (1926.) (R. 90.)

The Newman heirs were regarded as owners of the property. (R. 90.)

Mr. Ernest Newman said his family claimed Willow Point and Newman's Towhead. Newman's Towhead got its name from the Newman family; it was considered to belong to his father. "We had cattle running on it—a cattle range on it."

They paid their taxes in Louisiana and paid none in Mississippi. (R. 53.)

While they paid no taxes on this accretion, *it was not assessed.*

George R. Newman said he never heard of Newman's Towhead or any part of Willow Point being claimed by Mississippi, until since this suit began. (R. 70.)

No part of Newman's Towhead was in cultivation prior to 1912, the time of the cut-off. (R. 72-73.)

Lawrence Towns said he knew the Newman place over in Louisiana. * * * "They just call it *Newman Towhead.*" He leased it from Mr. Learned. (R. 224.)

His lease was offered in evidence; it was of a tract of land in *East Carroll Parish, La.*, containing about 2000 acres, more or less, being what is now known as *Newman's Towhead, with accretions*, and being a part of the Belle and Willow Point Plantations, in said Parish. (R. 226.)

He leased from Mr. Learned for six or eight years. (R. 226.)

This lease was made after the cut-off (1912). (R. 228.)

He did not cultivate any part of the Towhead: but dropped some corn in cracks, and it came up and the hogs ate it; he had 800 or 900 head of hogs over there. (On the Towhead.) (R. 227.)

Mr. Learned leased Towns this property *to keep others off of it.* Towns said: "*That is what he told me,* by word of mouth, *to keep everybody off of it.*" (R. 241.)

While it is thus shown persons claiming the ownership under Louisiana title, of the property, *had the actual physical possession* and occupancy thereof until a short time prior to the bringing of this suit, there is not a word in the record to show physical possession or occupancy of any of said property, by Mississippi claimants.

It is true that the Newmans had no deed to the Louisiana alluvion formed by accretion, *but they needed none;* they had a deed to the property bordering on the river, and owned the property in dispute as an accession by virtue of their riparian proprietorship.

The riparian proprietor does not get a new deed from the United States Government or the State, to the accretions formed by alluvion.

The accretions are *accessory rights,* attaching exclusively to the riparian estate.

The right to these alluvial formations is a vested right, *inherent in the riparian ownership* of the land to which it attaches.

White vs. Leovy, 49 A., 1660.
State vs. Buck, 46 A., 656.
Suc. Delachaise vs. McGinnis, 44 A., 1043.
Meyers vs. Mathis, 42 A., 471.
Municipality No. 2 vs. N. O. Cotton Press, 18 La. 122.

There is no doubt that in the early eighties, about 1882, Tullos Island, or Island 98, sometimes called Scruggs Island and which was then Mississippi terri-

tory, was actually in possession of a man by the name of Scruggs, and that part of it was cultivated and that it had a gin on it, but this possession seems to have been abandoned before the Island all caved away.

There is not a word that complainant can find in the record to show any possession by any one claiming title from Mississippi, of the territory in controversy.

William Miller said Scruggs was on the island in 1886 (R. 308).

Mr. Foster said there had been no gin on the island for a long time (R. 211).

The gin was there in 1882 (R. 215).

He does not say that he was closer than within two miles of the Island *after* 1882.

Complainant has shown by I. B. Beard and the two Newmans, actual possession of the property in dispute, Willow Point and Newman's Towhead, until 1907, when the Newmans dispsoed of the property (R. 53, 67, 70, 77, 79, 90).

Mr. Learned, under Louisiana title, was in the actual occupancy and possession thereof, after the cut-off in 1912, for six or eight years, through his tenant, Lawrence Towns, and that possession *was exclusive* (R. 224, 226, 227, 228, 241).

The fact is while Scruggs was in possession of Tullos Island, or Island 98, Mississippi territory in 1886, that island is shown to have washed away and to have entirely disappeared in 1893 and the channel of the river to have passed over its location, and the property in dispute is accretion to Louisiana, partly over the place formerly occupied by said island; that the land assessed, or sold in Mississippi, prior to the Spring of 1893 or 1894, the time when the island washed away, can have no bearing on the question now

being discussed; that is the acquiescence by Louisiana in the dominion and possession of Mississippi of the territory in dispute, for the reason that as long as any of said island was left, it was Mississippi territory and no claim was made to it by Louisiana. After the island disappeared in 1893 or 1894, the Louisiana accretions had made over part of the former location of that island, attempted assessments made in Mississippi, after said date, of the land by sections, townships and ranges, of the former island, which did not then exist, *was not an assessment of the accretions*, which had made out from Louisiana, as same had never been surveyed, and had no section number or township. It was simply a perfunctory continuance of assessment by the State of Mississippi of land which before the same caved into the river had been a part of Mississippi, but which no longer had any existence. It was an attempted assessment of land that had no existence, and therefore no assessment at all.

By reference to Complainant's "Exhibit A," Willow Point was in Township 19 North, Range 14 East, Louisiana; unless the accretions extended easterly from the eastern side of said range line more than six miles, it would be in the same township and range as Willow Point. If it extended East, more than six miles, such part would be in Range 15, *Louisiana*. Again, if any part of the accretions extended North beyond said township line, such part would be in Township 20, *Louisiana;* provided a survey was made of said accretions, while all the land defendants claimed to have assessed, purported to be in Township 9 North, Range 8 West, of Mississippi.

Complainant's contention is that none of this Louis-

iana property was ever assessed, or sold at all by the purported assessments, and sales in Mississippi and that even if Louisiana had notice of such purported Mississippi assessments and sales, which it did not have, *it would not bind Louisiana.*

Defendant's contention, when laid bare by the facts, is simply this:

That Louisiana territory can be acquired by an assessment and sale in Mississippi, without the alleged purchaser taking possession, and without any knowledge of such assessment, or sale by Louisiana, or its citizens.

No court will pay any attention to such contention.

There is neither allegation nor proof in the record, that either Louisiana, or the owners of the Louisiana territory in question, *had any actual notice of the alleged assessments, or sales,* and it is certain such notice would not be presumed.

It is a fact that accretions are not usually assessed in Louisiana, unless they are sold, when the assessor has some basis to act on; before then he would not know the description, acreage or value. Defendant claims the law requires an assessment. Suppose it does. *The fact is well known to every resident on the Mississippi River, that such is not generally done.*

These accretions are of various shapes and sizes, *and have no value until timber grows upon them.*

Until the last thirty or thirty-five years, the class of timber that grows on accretions had no value, and it is only in recent years that it has much value; this is a matter of general knowledge.

Whether these accretions were assessed by Louisiana, or not, *as Mississippi did not occupy or possess same,* there would be no ground for Mississippi to claim the territory, especially when it was without in-

herent power to assess in Mississippi, land across the river, belonging to Louisiana.

If such were true, Mississippi could thus acquire any lands in Louisiana that she happened to find off the assessment rolls in Louisiana, *simply by placing same on the assessment rolls in Mississippi, and then Selling it for non-payment of taxes, over in the State of Mississippi.*

Complainant, neither in its original nor First Supplemental Brief, devoted much space to this claim, as it did not regard same as an issue. The only reason it now discusses this question at length is because the Master, to whom this case was referred, seemed to think there might possibly be something to this contention.

The decisions of the Supreme Court, bearing on the acquisition by one State of territory, of another, by dominion and sovereignty of the one State over the territory of the other, with the knowledge and acquiescence of the latter State, are shown in Complainant's Second Supplemental Brief, beginning at page 13 thereof, to which the Court is respectfully referred.

We can make no stronger argument to show that the purported assessments in Mississippi after 1893 were assessments of land which had been cut away by the River and had no existence at the time of the assessments than to adopt the findings of the Special Master as set forth on pages 42 and 43 of his Report, which by reference Complainant adopts as a part of its argument on said point.

If the assessments were of land that did not exist the sales based thereon were of land that had no existance, and neither the assessments nor sales could have any legal effect,—even in Mississippi. The Defendant admits, by offering the assessments which

themselves show the disappearance of Island 98, that the Defendant's whole claim to the territory in question is based on a claim to territory which by its own admission had washed away and caved into the Mississippi River.

IV.

STATEMENTS IN BRIEF OF DEFENDANT ON EXCEPTIONS TO THE SPECIAL MASTER'S REPORT.

On page 2 defendants say the *territory* was originally surveyed as part of Mississippi. Complainant contends the evidence shows the land in dispute was never Mississippi territory, but was silt brought down from somewhere up the Mississpipi River, and deposited on the Louisiana shore, and the Mississippi shore receding, this alluvion extended over the locality that had once been Mississippi territory, but which had been lost to that State.

On page 3, it is admitted that this extending Louisiana bank, at Section 7, had gone east approximately one and a half miles.

On page 4, it says the old 1882 channel filled up to almost level. This might convey the idea that the 1882 channel was abandoned, leaving its banks intact. Such was not the case. This is not shown to be so by the evidence, but the evidence is that after 1882, the caving on the Mississippi side became more rapid, and as the Mississippi shore cut away the Louisiana bar line advanced.

On page 5 it says there is no dispute that subsequent to 1894 the channel was *east* of the location of Tullos Island as surveyed in 1823 and 1882.

This might convey an erroneous impression. The testimony shows that nearly all of the 1882 location of Tullos Island was in the channel in 1894, except a small part of the northwest corner, which had been covered by the sand bar from Louisiana. As to how far it went east afterward will be determined by the Commission when appointed. The channel evidently went much further east after the disappearance of Tullos Island.

On page 5 it is further stated that it is shown *without dispute* that from 1894 to 1912 the *territory* originally surveyed as Tullos Island, but at that time connected with Louisiana by the "old filled up 1882 channel," * * *. What complainant objects to is the implication that it has made any admission that the *territory* in question *ever belonged to Mississippi*, and that the old channel of 1882 filled up. Complainant contends that the whole river, as it existed in 1882, continued to move eastward for ten years, and as it did so the bar from Louisiana extended out over where the 1882 channel was. That the channel of 1882 did not remain the same even for a day, but that it was creeping eastward all the time, so that there was no fixed 1882 channel to fill up, after the river moved east of Tullos Island, but that the location of the 1882 channel was gradually filled each day as the river moved eastward.

On page 8 defendant again speaks of Island 98 as the territory in controversy. Of course, that is merely his contention.

On the same page, he says that the same rules apply to a boundary dispute between states that applies between individuals. That is the general rule, but it is not applicable in all cases. To illustrate—The land

must be accretion to the original bank, or to an island owned by an individual, for him to claim it. But, as to the State of Louisiana, any island formed in the river west of the dividing line belongs to the State, and all accretions which may attach to it. This is not true as to an individual. In Louisiana all islands formed west of the channel belong to the State.

On page 13 defendant comments on the fact that Mr. Purnell said the island above Island 98 was Hopkins' Island. The plat of Hopkins' Island and the island above Tullos Island are shown at pages 60-61 of Defendant's Original Brief, as they existed in 1882, and you will note that the western side of this *High Bar*, or Island, was nearly touching the eastern part of the former location of Hopkins' Island. The witness said he knew little about maps. The error was one that might easily happen.

On page 14, defendant says Cap't. De Lahunt took *Upper* Tullos Island for Hopkins' Island. He said the Only other island he knew of was Hopkins' Towhead. (R. 299.) That this island was west of Island 98. (R. 298.) The witness evidently called Newman's Towhead, Hopkins' Towhead.

On page 18, defendant says Captain West, in his testimony, denied the existence of the work sheets of the Survey of 1894. This is a mistake. Cap't. West said the field notes were on file with the Secretary and they would not give the original. The record shows what Cap't. West said . (R. 152, 153, 157, 158, 159.)

On page 23, defendant refers to Cap't. Marshall as saying the island is shown on the 1894 map. Of course this is merely his opinion. On page 29 he says Captain Marshall is corroborated by four of complainant's witnesses:

Ernest Newman, (R. 72).
George Newman, (R. 80).
Cap't. W. H. Reed, (R. 141, 145, 146).
E. T. Purnell, (R. 426).

Complainant contends there is no corroboration. The record will speak for itself.

On page 35 defendant claims that a number of complainant's witnesses said "boats travelled the channel (1823) in high water as late as 1878." (R. 432, 433.) Mr. Purnell, nor other witnesses of complainant ever said boats travelled the old channel of 1823.

On page 36, defendant, referring to Cap't. West's testimony, says:

> "If it is a fact that Chart 46 was pasted over Chart 45 up to the north end of Island 98, it does not correctly show the true situation."

This needs no further answer than to call the Court's attention to the fact that he does not claim same was a fact.

On page 37, defendant would make Island 98 and Newman's Towhead identical. This is not sustained by the evidence.

On page 75, defendant claims the engineers of the Mississippi River Commission, in 1894, found the islands in their *old position*, with timber growng thereon, and delineated by them on their field work sheets, and on the same survey and work, or field sheets, showed the river had passed around them to the north and east. Of course this is merely the opinion of some of defendant's witnesses.

Complainant contends the evidence shows this contention of defendant to be incorrect.

We have discussed this fully heretofore in this brief and will not again discuss same here.

On page 76 defendant says that none of the Mississippi River Commission maps of the Survey of 1894 leave off the island.

In reply, we merely refer the Court to complainant's "Exhibit C" and to Sheet 17, showing the Commission Survey super-imposed on the Chart of the Survey of 1882, which we have fully discussed herein.

TWENTY - TWO REASONS WHY DECREE SHOULD BE IN FAVOR OF COMPLAINANT.

Complainant gives the following as some of the reasons established by a preponderance of the evidence, why judgment should be rendered in its favor:

1st. It is shown that the accretions to the Louisiana shore, at the point involved, were continuous from prior to 1866 to the date of the avulsion in 1912-1913.

2nd. That during the same period the Mississippi shore receded correspondingly by erosion.

3rd. That after the boundary line between Complainant and Defendant had thus moved in an easterly direction, some five miles, an avulsion occurred in 1912-1913, through the Louisiana accretion, thus leaving Louisiana territory a part of the territory in question, on the eastern side of the river.

4th. That there never was any avulsion, other than the one of 1912-1913.

5th. That the banks of the river on both sides, as well as islands, were alluvion and when the current was directed against same, cut away rapidly.

6th. That Tullos Island, or Island 98, entirely disappeared.

7th. That the channel at all times was west of Island 98 until it disappeared entirely, and was on the Mississippi side of the river at this point.

8th. That the timber on Island 98 was timber that grows on older soil, such as gum, hackberry and cotton wood, one tree being 7 or 8 feet through.

9th. That the timber on Newman's Towhead, *being the property in dispute,* was principally cotton wood and willow, being such growth as appears on newly made soil in the Mississippi River.

10th. That the timber on the original land at Willow Point included sycamore, gum, elm and pecan, which usually grow on older soil, and being the same character of timber as was on Island 98.

11th. That Willow Point and Newman's Sand Bar, on which the Towhead later formed, existed at the same time as Tullos Island, and that they were on opposite sides of the river and could not be the same property as contended by defendant.

12th. That only one channel existed at the point in controversy prior to the 1912-1913 cut-off.

13th. The river at this point was about three-fourths of a mile wide. It was wide and deep, and *maintained* about its same width, and as the Mississippi shore receded, the Louisiana shore necessarily advanced, for the river to maintain its same width.

14th. That between 1882 and 1894, until Tullos Island entirely disappeared, the channel was always west of said island, with the current against the west side thereof, which was caving and could not be added to by accretions.

15th. That the channel until the cut-off in 1912-1913, was always east of Willow Point Bar, between that and the Mississippi shore, and after about 1894 with no island intervening.

16th. That at the point in controversy, Louisiana is on the convex side and Mississippi on the concave side. The channel and the caving is always on the concave side, and the accretions attach to the convex side.

17th. That the Mississippi River Commission considered the land in dispute to be Newman's Towhead and not Tullos Island, or Island 98, or any other island in Mississippi, and therefore marked on Chart 47, being the survey of 1913-1915, made after the cut-off of 1912-1913, the words, "*Newman's T. H.*" On the map of this Chart, made by defendant's witness, Capt. Marshall, in defendant's brief, page 16, appears in writing, the words, "*Tullos Island.*" These words are not on Chart 47 of the Mississippi River Commission, but have been placed on defendant's map by someone, with pen and ink apparently, and it therefore does not correctly represent Chart 47 of the M. R. C.

18th. That Walter R. Newman owned Willow Point Plantation. The Bar attached was called Newman's, as it belonged to the owner of Willow Point Plantation, and the Towhead formed thereon was also called Newman's Towhead for the same reason. This shows that the people, and river men as well as the Mississippi River Commission, considered the property in question to be Newman's Towhead.

19th. Had defendant's contention been correct, there would have been two channels at the point in controversy, in 1894, but the Chart of the Mississippi River Commission of 1894, superimposed on the Chart of 1882, shows only one channel, and where the second one must have been, for defendants contention to be correct, shows the bar from the Louisiana shore, extending entirely out to the only channel that existed.

20th. The Mississippi River Commission made a very exhaustive survey of the locality in question in 1882, and were at all times, until 1913, in charge of this reach of the river, and made almost yearly surveys (R. 152) and had the River cut around North of Tullos Island, between 1890 and 1894, leaving said Island intact, thus making two channels of the River,

they would have known something about it and their records would have shown it.

21st. There were plenty of living witnesses, by whom it could have been shown that there were two channels of the river at this point at this date had such been true. None were produced by defendant who swore to such condition, while complainant showed by numerous witnesses that there never was two channels in the river here, after 1894, and that there was no island between Newman's Towhead and the Mississippi shore prior to the 1912-1913 cut-off.

22nd. When a change in the river is alleged such as claimed by defendant occurred between 1890 and 1894, the burden of proof is on the one alleging such change to show same, in which defendant has utterly failed.

Complainant prays that your honors adopt the conclusions and recommendations of the Special Master and that you appoint a Commission to fix and mark on the ground the boundary line between the parties at the point in controversy, and that cost be taxed against the defendant.

Respectfully submitted,

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DEC 17 1930

CHARLES ELMORE CROPLEY
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1928

Number 9 Original. In Equity

THE STATE OF LOUISIANA,

Complainant,

VS.

STATE OF MISSISSIPPI,

Defendant.

BRIEF FOR THE STATE OF MISSISSIPPI ON EXCEPTIONS TO MASTER'S REPORT

GEO. T. MITCHELL,
Atty. General of Mississippi,

H. H. CREEKMORE,
PAT HENRY,
RUFUS CREEKMORE,
E. C. SHARP,
RUSH H. KNOX,
Attys., for State of Mississippi.

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THE STATE OF LOUISIANA,

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Defendant.

BRIEF FOR THE STATE OF MISSISSIPPI ON EXCEPTIONS TO MASTER'S REPORT

STATEMENT OF THE CASE.

This is a suit in equity filed by the State of Louisiana to establish a portion of the true boundary line between it and the State of Mississippi. After answer filed by the defendants and on motion of the complainant, a commission was appointed by this court for the purpose of taking testimony and proof relative to the merits of the controversy. The case being called before this court the same was referred to a special master, the Honorable Thomas G. Haight, with directions and authority to report to this court his findings of facts, conclusions of law, and recommendation for a decree herein. The case now comes before the court on the record and transcript of evidence taken before the com-

mission, report of special master, and exceptions of defendant thereto.

STATEMENT OF FACTS.

That portion of the boundary line between the State of Louisiana and Mississippi, here in dispute, and the true location of which is to be determined, is in the vicinity of the territory known as Albermarle Bend of the Mississippi River, and between Issaquena County, Mississippi and East Carroll Parish, Louisiana. The territory in dispute was originally surveyed as a part of Mississippi and is described as a part of sections 9, 10, 15, 16 and 17, all of sections 20, and 21, and a part of sections 22, 28, 29 and 30, all in Township 9, North, Range 8, West, Choctaw District as shown by the United States Governmental survey of 1823 When this survey was made fractional sections 20, lots 2, 3, 4 and 5, all of Section 29, and fractional section 30 composed what was known as Tullos Island, later as Island No. 98.

The remainder of the territory in dispute then lay to the east and north of Tullos Island on the Mississippi Mainland, it being separated from the Island by a chute running between it and the shore of the mainland.

The Louisiana shoreline was surveyed in 1824. This survey showed Willow Point Plantation in Louisiana comprising fractional sections one to nine, Township 19, North Range 14, East, numbered clockwise in fan shape with the river flowing slightly south and east until it reached Willow Point, from whence it sharply turns in a southwesterly direction.

The various surveys being shown on maps attached to the original brief for the State of Mississippi, defendant, filed herein, which brief and maps are asked to be taken and considered in connection herewith.

After the 1823 and 1824 governmental surveys were made, no survey of the reach of the river in question showing both banks was made until 1882, which survey is shown by Mississippi River Commission Chart No. 45, which appears on page 13 of the original brief filed herein, being complainant's exhibit "M" which was made under the direction of the Mississippi River Commission. It shows all the details of the survey; not only the shore line but the river and general features of the land such as levees, landings, cultivated and timbered lands, but also government lights, contours, and elevations of the land and the soundings in the river.

It shows the Louisiana shore to be caved along the north side of sections 1, 2, 3 and 4, the river there since the 1824 land survey having moved about one-quarter of a mile. From the line dividing sections 4 and 5 where later on no change has occurred, down to section 9, the river had changed its channel to the eastward, the new channel being at its most easterly point in front of section 7, and there approximately a mile and one-half east of the channel as shown by the 1923 survey. The course of the river after leaving Williow Point has also changed, it then flowing in a southeasterly direction, whereas it had formerly flowed in a southwesterly. Tullos Island, or Island 98, is shown divided into two parts, this apparently having been done by

the chute shown running between the upper and lower islands, all of which save the lower end had closed up. The upper island composed of a part of section 20, of the original Tullos Island, had extended in a northerly and northeasterly direction: the lower island, although greatly reduced in size, had extended slightly to the east, the growth in that direction apparently being at the expense of the old chute which is shown much narrower than in the 1923 survey.

Sheet 17 and Exhibit 4-A-B-C show that the Louisiana shore on the north side had caved to a very great extent, especially up-stream to the west from Willow Point and decreasing almost to nothing at the point. The direction of flow from the point had changed from the southeasterly direction of 1882 to a northeasterly direction, the river abandoning its old bed, cutting around the head of and to the north and east of upper and lower Tullos Island, straddling and enlarging the original chute between Tullos Island and the Mississippi shore and making it the new channel of the river. In making this new channel the river is shown to have cut into the main Mississippi shore north and northeast of Tullos Island the full width of the river or more, while towards the lower end of the island there had been less caving of the Mississippi shore; the widening of the chute there being mainly at the expense of the island, the southern and eastern part of which is shown to be in the channel of the river. The old 1882 channel is shown filled almost level across, twenty feet above the level of the then (1894) channel and twenty to twenty-five feet lower than the island.

Mississippi River Commission Chart No. 47, survey of 1913 and 1915, is the next map of that portion of the river here under consideration. This chart shows the same character of detail as Chart 45 of the 1882 survey and sheets 5, 5½ and 6 of the Mississippi River Commission Survey of 1894. It shows that the river had returned to its old 1882 channel, not, however, until parts of Sections 8, 9, 10, 15, 16, 17, 21, 22, and 29 T. 9 N. R. 8. W. had caved into the river on the Mississippi shore, and all of this territory not actually occupied by the bed of the river had been added by accretion to Island 98, or "Newman's Tow Head," so-called on the chart.

There is no positive testimony in the case showing how the river changed from its 1823 to its 1882 channel. The maps mutely testify to the radical change that occurred; the witnesses testify to the existing physical facts which circumstantially explain how it occurred.

There is no dispute between the testimony of the witnesses offered for the complainant and for the defendant with reference to what occurred subsequent to the making of the survey by the Mississippi River Commission in 1894, at which time the channel of the river was to the east of the location of Tullos Island as surveyed in 1823 and 1882. This testimony shows without dispute that from 1894 until 1912 the Mississippi River rapidly ate into the Mississippi bank and that the territory on the westward side of the river, originally surveyed as Tullos Island but at that time connected to the Louisiana shore by the old filled-up 1882 channel, rapidly built towards the Mississippi shore by ac-

cretion; that in 1912 or 1913 the river made a sudden change in its channel, cutting across the neck of the so-called towhead at the point where the old 1882 channel had been, scouring out the old riverbed and re-establishing itself there. The conditions shown on Mississippi River Commission Chart No. 47 are substantially as they are today, except that the 1894-1913 channel around the island has now become so filled up as to be unnavigable.

BRIEF AND ARGUMENT.

The exception of the defendant to the Master's Report lettered "A" is:

> "That the changes in the location of the channel of the Mississippi River in the place under examination herein from 1823 to the change which took place in 1912-13, were due to gradual erosions on the Mississippi shore and the gradual accretions to the Louisiana shore, and that none of said changes were due to avulsion."

Under this general exception the defendant has noted ten subheads or conclusions of fact reached by the Master, which taken together led him to the conclusions stated in the principal exception "A", and as the facts and arguments on these various subheads overlap one another for brevity and clarity, we will discuss all of these together.

The complainant's contention briefly stated is, that the Louisiana shore gradually built by accretion in a westerly direction towards Mississippi, the river cutting into and encroaching on Mississippi, whereas it gradually moved

north and east, and the Louisiana shore progressively following the encroachment; that this condition continued until all of Tullos Island, and much of the Mississippi mainland washed away, and until the Louisiana shore by accretion had built over the location formerly occupied by Tullos Island and had extended its northeasterly limits about one and one-half miles east and north of the original eastern boundary of Tullos Island.

The defendant's contention is that subsequent to the year 1882 the Mississippi River above and to the west of Willow Point cut into the Louisiana shore deflecting the course of the current from a southeasterly direction to a northeasterly direction; that because of this deflection in its course, the river cut around the head of it and to the north and east of what was left of Tullos Island, scouring out the old chute between the Island and the Mississippi shore; and making a new channel there; that the old bed of the river filled up so that Tullos Island became attached to the Louisiana shore; that the river continued to cave the Mississippi shore, adding to the Island by accretion until the year 1912 or 1913, when it suddenly abandoned its new channel and went back to the old 1882 channel, leaving Tullos Island again in truth an island, but greatly enlarged by the accretions thereto.

As stated by the Special Master in his printer report on page 18, "the testimony in respect to the total disappearance of Island 98 prior to 1894 is very conflicting and difficult, if not impossible, to reconcile."

With this finding of the Master, defendant contends that the burden being upon the complainant to establish its theory by a preponderance of the evidence, it has failed to prove that the Mississippi River gradually moved eastwardly from its 1823 channel to its 1882 channel; that the Louisiana shore line progressively followed it by accretion. And having failed to meet the burden imposed upon it, it has wholly failed to prove that such accretions became attached to territory belonging to the State of Louisiana and that the territory now in question is the property of that State; the contention of defendant is that it having been conclusively established that the premises now in question were the property of Mississippi at the time of the 1823-24 survey. And the Special Master having found as a fact that the Mississippi River Commission surveys of 1823-24 correctly located the river and shore line of the respective states at the date of these respective surveys, and that at these dates the territory now in dispute was within the boundaries of Mississippi. (Special Master's Report, pages 2 and 3.)

It therefore follows that it having been conclusively established that Island 98, which is the territory now in controversy, was the property of Mississippi in 1823 and 1824, and the plaintiff having failed to establish by a preponderance of the evidence that the Island completely disappeared prior to 1894, the presumption is that the Island never disappeared and is now the property of the State of Mississippi.

The same rules of law are applicable in a boundary dispute between States as between individuals.

Rhode Island v. Mass. 12 Pet. 734; 9 L. ed. 1233.

There is a presumption in favor of the permanency of boundary lines once established.

Tenn. v. Muncie Pulp Co. 119 Tenn. 47; 104 S. W. 437.

Simpson v. Martin, 174 Ark. 956; 298 S. W. 861.

A party asserting material changes in the course of a boundary river such as affects the boundary line has the burden of proving such changes.

Okla. v. Texas, 260 U. S. 6061; 67 L. ed. 428.

Simpson v. Martin, 174 Ark. 556; 298 S. W. 861.

Baumhart v. McClure, 21 Ohio, Appellate 491; 153 N. E. 211.

The party claiming land as accretions therefore has the burden of proving (a) that such lands were actually formed by accretion, (b) that they attached to lands belonging to him contiguous to the water.

Green v. Whitten, 200 Ky. 725; 255 S. W. 519.

Tillotson v. Fulp, 173 N. C. 499; 90 S. E. 500.

Mann v. Archbell, 186 N. C. 72; 118 S. E. 911.

Ball v. McDuffy, 212 S. W. 844.

Producers Oil Co. v. State, 213 S. W. 349.

Land v. Dunn, 226 S. W. 801.

Lennox v. Isbell, 245 S. W. 728.

Petty v. Oil Co., 254 S. W. 565.

Defendant's contention that Island 98 was never completely washed away is supported by the following witnesses, to-wit:

FROM 1823 TO 1882.

Complainant's Exhibit "M" Mississippi River Commission Chart No. 45, Survey of 1882, with the 1823 and 1824 governmental land surveys superimposed on it shows the difference in the location of the channel of the river in the years 1823-24 and the year 1882. Chart 47, Survey 1913-15 shows the channel of the river to be in identically the same location as in 1882. R. p. 183, 184. These charts show in detail the topography of the land now on the Western mainland lying between the 1823 shore line and the 1882 and 1913 shore line. A depression slightly to the East of the location of the 1823 channel, not named on the charts, but locally known as St. Francis chute, is clearly shown on each of them. Witnesses both for complainant and defendant show this depression to be the old filled-up 1823 river channel.

The testimony of the complainant's witness, George Prince, shows that he is familiar with this old 1823 channel. R. p. 39.

The complainant's witness, George Newman, is also familiar with this channel; his testimony showing that it runs in a Northeasterly direction from about Hendersons until it reaches the present river channel at about Willow Point. R. pp. 55, 56, 58, 59 and 60.

Defendant's witness, Lawrence Townes, testifies that he is familiar with this old river channel: St. Francis Chute; that it is on the Louisiana mainland and runs in a southerly direction down from Mrs. Newman's plantation, (Willow Point). R. p. 232 and 233.

The defendant's witness, Etna J. Albrittian, is the owner of some of the land in controversy under Mississippi patents. He has closely investigated the lands, had them surveyed, and gone over them with the surveyor. With reference to the St. Francis Chute, or the old 1823 channel, the witness in substance, testified as follows:

That in October, 1924, with the river stage at 38.9 at Vicksburg, the water was backed out into this old river channel. He followed it from Hendersons until he reached the river at Willow Point, finding it filled with water the entire way. The bank line of this old channel was clearly discernible most of the way, the banks showing about ten feet above the level of the chute. This chute or channel was shown by the survey to be in the same location as the channel of the river in 1823. R. p. 245, 248, 251.

Complainant's proof tending to show that the change in the channel of the river between 1823 and 1882 was the result of accretion and not of avulsion is supplied only by one witness, C. H. West. His testimony is based upon two maps, one of which was made in 1866 and the other in 1870. The 1866 map was not introduced in evidence, but the witness shows by his Exhibit "G" the bank line on the Louisiana shore, presumably taken from this map. R. p. 147.

The other map introduced as an exhibit to this witness's testimony was a survey of what is known as Hopkins

Island, as it existed in 1869-70. Comp. Exhibit "BB". R. p. 148.

With these maps as the only facts before him the witness undertakes to give a history of the change in the river during this period of time, expressing as his opinion that the river progressively moved Eastward and the Louisiana shore line followed it, being built by accretion. It should be kept in mind that there is no competent evidence of the 1866 survey and that the 1869-70 survey of Hopkins Island did not undertake to be a survey of either the Mississippi or the Louisiana shore line, but only of the island itself. It should also be borne in mind that none of these maps, except the 1882 survey showed the topography, the contours and elevations of the ground. The testimony of this witness is merely his opinion based only on the fact that the shore line in the different years was East of its former location.

FROM 1882 TO 1894.

In explaining how the river changed from the 1882 channel to the 1894 channel, the complainant's witnesses attempted to establish the fact that Tullos Island completely washed away, and that the Louisiana shore progressively followed the river to the Eastward by accretion, as the Missippi shore and the Island caved into the river.

Complainant's witness, T. B. Beard, a brother-in-law of Walter Newman, the owner of Willow Point Plantation, has been familiar with the territory in controversy for about fifty years. At the time of his earliest recollection, a bar extended out from Willow Point about a mile and a half, or two miles, and continued to grow year by year until, in

1912, it was three or four miles from the mainland. R. p. 87 and 88. He denies the existence of Island 98 during this period of time. R. p. 89, 95.

Complainant's witness, E. T. Purnell, moved to the Purnell plantation opposite Island 98 on the Mississippi River in 1880. R. p. 260. The channel of the river was then on the West side of Island 98 with a chute between the Island and the Mississippi shore. R. p. 262. Island 98 was caving on the west side and finally disappeared in 1894 or '95. R. p. 264, 282.

During this period of time the Louisiana shore was building out toward Mississippi. R. p. 265. Between the towhead and the mainland there was a depression through which in high water the boats would make a cut-off. R. p. 268, 269.

N. B. Captain Marshall's testimony shows this depression to be the old filled-up 1882 river channel.

The witness is familiar with Hopkins Island, describing it as being Northwest of Island 98. Hopkins Island did not wash away, R. p. 275, but the channel of the river changed around it. R. p. 276.

N. B. What this witness called Hopkins Island is shown conclusively by him, in referring to the map, Comp. Ex. "H" to be upper Tullos Island. R. p. 277.

Joseph V. De La Hunt, witness for the complainant. A steamboat captain and familiar with the river at the point

in question since 1880. Island 98 disappeared. R. p. 289, 292. Is familiar with Hopkins Island, the channel of the river being between it and Island 98; west of Island 98 and east of Hopkins. R. p. 292-298.

Hopkins Island never washed away. It was there in 1908. R. p. 298.

N. B. What this witness designates as Hokins Island was evidently upper Tullos Island.

Captain Charles H. West, member of the Mississippi River Commission since 1910. (R. 129.) His first observation of the river at the point in question was in 1893. R. p. 156. Has been thoroughly familiar with the river there since 1898 when he was appointed Chief Engineer of the Mississippi River District. R. 130. The witness explains the various maps and blue prints attached as exhibits to the original bill of complainant, and with them as a basis undertakes to give a progressive history of the changes in the river. He testified that the river gradually ate into Tullos Island and the Mississippi shore and that the Louisiana shore progressively followed it, being built by accretion. That this condition continued until all of Tullos Island was washed away and the Louisiana shore had built over its former location; that then by a sudden change in the course of the river a new channel was cut across these accretions, leaving them an island.

In giving his testimony the witness considers only the shore lines drawn on the maps, giving no consideration to the elevations and contours shown thereon. R. p. 140. He

attempts to explain why, in preparing his blue print Exhibit "I." showing the changes in the river during this period of time he ignored the topographical details shown on the map from which his exhibit was prepared, and in the location where the islands were shown on the map, wrote in the word "accretion." As to the soundness of his explanation, the court may best judge by reading it. R. p. 155-156.

The witness denies that there was a general topographical survey of this territory made in 1894, but admits that the original field notes of this 1894 survey are on file in the office of the Secretary of the Commission. He states that these field notes will show only the 1894 shore line. R. p. 157, 158.

N. B. The witness is conclusively shown to have been mistaken in these statements by the testimony of Captain Marshall who obtained from the Commission and introduced in evidence, blue prints of the original field or work sheets of the 1894 survey showing all details of topography, contours, and elevations on the land and soundings in the river.

William Miller, witness for defendant. A colored man born in 1875. Lived on Eustacia plantation directly in front of Island 98 until ten years of age. Island 98 had 250 acres. R. p. 302. Moved to Brunswick, eight miles below Eustacia, stayed there ten years, visiting back at Eustacia every week. R. p. 310. Moved to Vicksburg, stayed there from 1897 to 1916, working as a roustabout on the steam-

boats, "Annie Laurie," "Ruth," "Chattahoochie," "Belle of the Bend," "Ben Hur," " Cardee," "Webb Oliver." Passed the island six times a week. Island 98 never washed away, although all but about 75 acres of the upper part did cave into the river. R. p. 304. A part of the island was in cultivation, a man by the name of Scruggs living on it. R. p. 305-306.

Lawrence Towns. 59 years of age. Colored. Lived at Chotard in 1880. Familiar with Island 98 which he called Scrugg's Island. Also with Hopkins Island R. p. 220. The witness leased the island and raised hogs on it, eight or nine hundred head. R. p. 225-227.

The witness is familiar with what he calls Hopkins Island, it being just a little to the north and west of Island 98. R. p. 231-232.

Was a roustabout on steamboats for ten years, passing by Island 98 three or four times per week. R. p. 220. The channel was on the west side of the island except in high water. A part of the island washed away, but not all; some of it is still there. R. p. 221-222.

R. E. Foster. Age 75. Member of the Legislature. Owns three places, the lower place in sight of Tullos Island, or Scruggs' Island. Has lived there since 1882. Island 98 never completely washed away. R. p. 209, 210. The channel changed frequently at this point. R. p. 211.

E. J. Albrittain. Is thoroughly familiar with the territory in question, especially as to the physical conditions

existing. Holds Mississippi patents to some of the land in controversy. R. p. 243. Went over the land in 1924 with a surveyor. R. p. 256, 257. The witness with the surveyor located the old chute line between the Island and the Mississippi shore in 1823. This channel was clearly discernible in the same location as the old chute in 1823 with lakes interspersed through it. He followed it to where it runs into the present river channel. R. p. 245, 246.

The territory to the West of this old chute line, running up to the river on the West and paralleling the old chute line on the East, is covered with large cottonwood and willows. R. p. 243. This area between the old chute shore line and the present channel of the river is composed of clay soil. The river bank there is about 25 feet high. The largest timber on the Island grows on this high ground, and immediately East of the old chute the growth is of small willows. R. p. 244. The character of the soil and the character of the timber here is the same as that on the old Mississippi mainland. R. p. 252.

Captain H. M. Marshall. Civil engineer since 1877. Lives at Vicksburg. Has been in the employ of the United States Government for forty years. Has been in the United States Engineer's office at Vicksburg from 1888 until 1924. R. p. 168 and 169. Is thoroughly familiar with the territory in question. There in 1890, in charge of the levees in that immediate vicinity. R. p. 175. The witness first refers to Sheet 17 of the Mississippi River Commission—Complainant's Exhibit "C"—showing Island 98 divided into two parts. R. p. 171.

In 1890, during the high water, witness was in charge of the levees in this territory, and both parts of the island were there then. He saw the mail boat come up the chute between the mainland and the islands. R. p. 185.

The witness next introduces Exhibits 4-A-B and C, three blue prints of field sheets numbers 5, 5½ and 6 of the Mississippi River Commission Survey of 1894, certified to by the Secretary of War as correct and official maps. The scale is 1:10,000 and the maps show the same character of detail as Chart 45 of the 1882 survey.

N. B. Captain West in his testimony denied the existence of these maps. Counsel in their brief evidently blindly followed Captain West's testimony, denying and ignoring their existence.

Captain Marshall described the topographical details shown on these maps, showing that at the time the survey was made in 1894, there was high ground of the same elevation, or a slightly higher elevation, than Tullos Island in 1882 and located in identically the same place as the islands were at that time; that to the West of this high ground and at the place where the channel of the river was situated in 1882, there is low ground from twenty to twenty-five feet higher than the water level. R. p. 172, 173:

> "A. Exhibit 4-A, in the upper right hand corner, shows high ground, an elevation of 110, Memphis data. The line (fol. 257) running around the high ground shows the timber line. This high ground is on the Western side or towards Louisiana of the Mississippi river. This 4-A is sheet No.

6 of the blue print issued by Mississippi River Commission, certified by the Secretary of War. It is joined to sheet 5½ of the same survey and blue print marked Exhibit 4-B. On that 4-B the high ground extending down the river with the timberline marked thereon. Sheet 5½ of 4-B is continued down the river on Sheet 5. This sheet shows a continuation of the high ground down the Mississippi River with the timberline marked thereon. On these three sheets elevations are written, referring to Memphis data. They give the height of the ground. Height of the ground, as I have stated, is 110 at the upper end, and—

Q. (Interposing.) *The upper end of what?*

A. *The upper end of the island.* And it runs off down to various numbers, 104, 108½, 107.4, 104.3, 109.5—various numbers. That is on the high ground.

Q. *That is Tullos Island you are talking about?*

A. *Yes, sir.* To the West and at the upper end of Tullos Island are various numbers, giving the elevations—86.4, 86, 89, 85, 86, 90, which it will be noticed, the 90 is 20 feet lower than the 110. On the lower end of Tullos Island the figures written to the West of the Island, run 81, 85, 82, 84 and 95. On these three sheets the shore line of 1882 is (Fol. 258) marked along the Western limits or Western edge of Tullos Island. On the Louisiana side the bar line of 1882 is marked. To the East of this Island, is shown the channel of the Mississippi River at the time this survey was made in 1894.

Q. Is there anything else shown on that map,

Exhibit 4, A, B, C, which would indicate the change of the main channel of the Mississippi River?

A. The fact that the Island elevation is over 100, which is about the elevation of the bank line on the Mississippi River shore. The location of the channel of the Mississippi River East of that high land shows that the River had gone around the upper end of the Island and was flowing to the East of the Island.

Q. Does that show that the Island was washed away or still there?

A. The Island could not have been washed away."

And again on pages 173 and 174:

"Q. I don't know whether you have stated it or not, but is there anything else shown on the map which would indicate the change of the main channel of the Mississippi River?

A. The fact that the Island elevation shows a reading of 110 feet, and the water survey on the shore line shows a reading of 60 feet, is absolute proof of the fact that the Island was 50 feet above the water surface at the time of the survey, with trees growing on top of it. I can state of my own personal knowledge that in 1890, four years before the survey was made, that Island 98, or Tullos Island, the island above it, had not been washed away, but was still in existence. Of course everybody knows that (Fol. 260) an island cannot be washed away and then four years later be built back with big trees growing on it, as shown by this survey. There is another thing I want to show you. Up stream from this island shown on

Exhibit 4-A, and Westward to the Louisiana side, the elevations of the ground surface are 20 feet lower than the elevation of the island, that is, the ground West of the island is 20 feet lower than the surface of the island. This low ground to the West of the island is in the location of the Mississippi River in 1882, which shows that the Mississippi River had gone around the head of the island and over to the east, and a bar had formed from the Louisiana side over to the head of the island. If the island had washed away and the accretions made from the Louisiana shore, this low ground could not have occured if the Mississippi River had gradually moved over towards the State of Mississippi, building an accretion on the Louisiana shore. That accretion would have been adjacent—would have been higher adjacent to the Louisiana shore, and lower as the accretions were formed from year to year towards the Mississippi shore." (R. 173 and 174.)

Captain Marhsall correlated the three blue prints 5, 5½ and 6 on one sheet, making a tracing so as to show on this tracing in one sheet, the location of the high ground, or islands, and the low ground to the West. On this tracing, the witness superimposed the section lines. He also prepared another tracing reduced to the scale of the Mississippi River Commission Charts No. 45 and 47.

"A. I have prepared a tracing from blue prints—from the three blue prints shown as 4-A-B-C, so as to put the river in that vicinity on one drawing and have marked the tracing Exhibit 4-A-B-C, on the lower right hand corner.

Q. All right, what does that show?

A. It shows in a clear way then what I have stated with regard to the blue prints. It is, as far as it goes, a fac simile copy of the lines and figures on those three sheets, 4-A-B and C. On that tracing, which is on a scale of 1 to 10,000, the scale on which the Mississippi River Commission surveys are platted in the St. Louis office, on these tracings I have drawn the section lines in this vicinity, showing sections 16 and 17 and some of 20, 21 and 28, covering Tullos Island as Island 98 and the Mississippi adjacent shore. Also on that tracing I have marked two lines in blue pencil along which I have written the the North border of sheet No. 5, and the Southeast border of sheet No. 6, so that these tracings may be fitted over the blue print sheets to (Fol. 273) show that they are identical.

Q. You say the blue print sheets are what?

A. They are 4-A-B and C.

Q. From that then what, if anything?

A. In order to reduce this survey sheet 4-A-B and C from the 1, to 10,000 scale to the 1 to 20,000 scale, which is the scale on which the maps of the Mississippi River Commission are printed, I have prepared a tracing reduced to one-half size, otherwise identical with the tracing of Exhibit 4-A-B and C. This second tracing is marked in the lower right hand corner "Reduced from Exhibit 4-A-B and C."

Q. What does it show?

A. The same thing. It is a fac simile of the other tracing except as to size. It is one-half the size.

Q. You call that exhibit what?

A. I will call one Exhibit 4-D and one Exhibit 4-E." (R. p. 176).

The witness placed the tracing 4-E over complainant's exhibit "I," upon which complainant's witness, C. H. West, had written "accretion." The tracing when so placed with the section lines coinciding, shows the high ground in the same location as the island, and the low ground in the same location as the river channel of 1882. Page 178:

"Q. State whether or not the 1894 survey maps of the Mississippi River Commission show the island, and sheet No. 17 shows the upper part of Island No. 98, or Tullos Island with the island above on the West, the bar line of 1894 on the Western shore?

A. Yes, sir; the bar line is on the Western shore of the Mississippi River. I will state it the other way around. The river is the Eastern end of the island.

Q. Where is the island shown?

A. The island is shown on the 1894 map which you have asked about.

Q. And you say that the only place that Captain West could have gotten the blue print which he made was from the survey of 1894 and the survey of 1883?

(Fol. 276.) A. Yes, sir.

Q. Go ahead now, Captain Marshall.

A. On the Western side of the channel of the Mississippi River marked on Exhibit "I,"

'Mid-river distance, Mississippi-Louisiana,' at the spot where Captain West wrote 'accretions,' appears the location of the low ground shown on sheets 4-A-B and C, which I have previously described.

Q. That is shown by placing your Exhibit 4-E over Exhibit I?

A. Yes, sir; with the section lines on 4-E fitting over the section lines on Exhibit I.

Q. Does any other drawing or map which you have seen, except this map, or No. 3 of C. H. West, lose sight of the Island?

A. No, I have not seen any of the maps except the Mississippi River Commission maps which have been under discussion, the 1 to 10,000, 4-A-B and C, the one-inch to the mile, 17, Exhibit 3, these are the only maps that I know of, except the one issued with the super-imposed lines on Sheet 17, showing the 1894 line, from which, I presume, Captain West prepared his Exhibit I. None of those shown was accretion, and none of them have the island left off. The Sheet 17, one inch to the mile, with the superimposed red line of 1894, shows the lower part of the upper of the two islands, and the upper part of the lower of the two islands, or Tullos (Fol. 277) Island, surrounded by the red line to the West of the Mississippi River." (R. 178).

The witness also compares Chart 45 of the 1882 survey and 47 of the 1913 survey showing that the channel in 1913 was in the same location as the channel of 1882. The witness then compares Exhibits 3 and 5 to the testimony of

complainant's witness, C. H. West, and shows the same thing:

Q. Marked Exhibits 3 and 5 to the cross-examination of Captain West?

A. One is Exhibit 5 and the other is Exhibit 3. These last two are the tracings from which the blue prints were made, that were sent to me by Captain West. When placed one over the other so that the sections coincide, the mid-river distance on the Exhibit 3 is right down the middle (Fol. 287) of the channel shown on Exhibit 5, confirming comparisons that I made on Sheet 45 and Sheet 46 of 1882 with Sheet 47 of 1913-15.

Q. If the river had gradually eaten away the Mississippi side, and had caused accretions to form from the Louisiana side across to the Mississippi side, is it probable that the river bed of 1813-15 would have been in the river bed of 1882?

A. Of course, everything is possible.

By Mr. Dale: Objected to by complainant as incompetent evidence, being purely and solely the opinion of the witness, without any reason for said opinion.

Ruling reserved by the Commissioner.

A. I have stated the facts as shown by the 1894 survey with the old bed partly filled up with sand twenty to thirty feet lower than the top of the land on the Island. I have shown that the channel filled up with sand was identically in the same location as the channel in 1882; and I now here show that the channel of 1882 is in identically the same location as the channel in 1913-15. Now, put the three together.

Q. Now, have you made that showing from the maps of the Government?

A. From the official maps of the Mississippi River Commission." (R. p. 184 and 185).

The witness refers to Captain West's testimony and shows its inconsistence and explains how the survey of the Mississippi River Commission of 1894 disproves his theory:

Q. Please refer to the blue print which is marked Exhibit I to the State of Louisiana, complainant, which is a map by Captain C. H. West, and state what that shows?

A. The most striking thing on there is the word 'accretions,' which is written on the bar, showing between the bar line of 1894 and the bank lines of 1866.

Q. You have read Captain West's testimony, have you?

A. Yes, sir; I have read his testimony." (R. p. 176 and 177.)

Bottom of page 177:

"Q. Is there anything in the Mississippi River Commission's Survey of 1894 that would justify designating this land on Exhibit I as accretions?

A. No. I have stated practically everything that was on the 1894 survey sheets, 4-A-B and C. I stated on there everything that is cognizant to this question, and there are no accretions marked there. I have studied them all, and there are no accretions marked there—bar line, timberline,,

high ground, low ground—nothing said about accretions.

The witness shows the changes in the course of the river as manifested by caving banks and buildings of the levees. This testimony is based on blue print of the Mississippi River District map of Albemarle Bend, showing changes in channel from 1882 to 1896, prepared by C. H. West, Chief Engineer.

The testimony of this witness here shows that between 1882 and 1885 the levees were first built near the head of lower Tullos Island and later near its lower end, showing caving along the chute or near the head of the island, extending down in front of the main Mississippi bank about Chotard. The caving apparently stopped in this vicinity for several years, but by 1888 had begun above and behind to the North and East of upper Tullos Island, where a levee and run-around were built in 1888 and 1889. In 1890 another levee was built from the 1889 levee down to the head of the 1883 levee. This was followed in 1892 by a new levee from the lower part of the '90 levee to the levee at Chotard. This shows that from 1888 to 1892 a complete new levee was built around Albemarle Bend to the North and East of Tullos Island. R. p. 180, 181.

The testimony of this witness shows conclusively that Island 98 did not wash away but that because of some radical change in the river, its course was changed so as to cut around the North and East of Tullos Island to make a new channel in the enlarged chute.

Defendant's contention that Island 98 was never completely washed away is supported by the following witnesses, to wit:

For the convenience of the court we have briefly digested the testimony of the most important witness beginning with that of Captain Marshall:

CAPTAIN MARSHALL:

P. 257 and 258 explain fully just what was shown by the Mississippi River Commission Survey of 1894. P. 258—the 1894 survey shows that the river had gone around the upper end of the Island and was flowing to the east of the Island. The Island could not have washed away. P. 259—Survey 1894 shows the Island was 50 feet above the water surface at the time of the survey, with trees growing on top of it. Could state from his own personal knowledge that in 1890, Island 98, or Tullos Island above, had not been washed away, but was still in existence. P. 260—Depression 20 feet lower than the Island on the west of the Island and in the same location as the river of 1882. P. 271—Mail boat "Issaquena" navigated chute next to the main shore in 1890. P. 275—Nothing in the Mississippi River Commission Survey of 1894 that would justify Captain West to write the word "accretions" on his map—Exhibit 1. Island 98 is shown on the map of the 1894 survey. P. 276—Every Mississippi River Commission Map shows Tullos Island, or Island 98, and none of them show accretions. P. 279—Levee District Map shows that the Chute which ran east of Island 98 was caving on the Mississippi side as far back as 1883 and 1884, requiring a run-around

to be built on the Mississippi Levee adjacent to the lower end of the Chute. P. 280—The next is a levee built in 1888 and 1889 on an extensive run-around at the upper end of the Island in the location of Duvall's Landing. In 1889 a small run-around was built above Duvall's Landing. In 1890 a run-a-round was built from the run-a-round of 1888 and 1889 down to the run-a-round of 1883, showing that caving had progressed toward the northeast of Island 98 and the adjacent island, and that it continued as shown by successive dates—1893, 1894, 1895, 1896 and 1897. There is another here 1892 running from the 1890 extension down to the middle of the 1883-1884 run-around. The location of all of these levees show undoubtedly that the river had caved north and east of Island 98. P. 285—Exhibit 6-F, 1913, Map River, same place, 1882. P. 287—Was shown that the channel filled up with sand, was identically in the same location as the channel of 1882, and it here shows that the channel of 1882 is in identically the same location as the channel of 1913, this showing made from the official maps of the Mississippi River Commission.

Captain Marshall corroborated by the following witnesses:

C. F. Hume, Pages 297, 300, 321.

Lawrence Towns, Page 349

Earnest Newman, Page 72

George Newman, Page 80

Capt. W. H. Reed, Pages 141, 145, 146

E. T. Purnell, Page 426.

Captain West, P. 202—says that river known as Albemarle Bend filled up after the 1912 cut-off, so that in two or three years there was no flow through the bend except in the high water.

Captain Reed says, P. 147—That Albemarle Bend was filled at the north end so that boats could not pass through by 1916.

Captain Prince, P. 15-16—Could get through in 1916 if gauge was 12 feet, but by1920 the channel was entirely filled.

(The River Commission Chart 47 shows that the water was 40 feet deep at this place in 1913.

Now if this river filled entirely in seven years and ceased to flow in three years, then people could have walked along there within five years after the cut-off. This same thing could have happened in 1823 and 1882.)

CAPTAIN PRINCE: (Begins 1897)

Could not go through the Albemarle Bend in 1916—Pages 15 and 16—Trees 8 to 10 inches when he first knew it—it was about 1900. Variety of Cotton wood and willow. P. 17—By 1920 upper end of Albemarle filled entirely. P. 33—Water backs up in 1823—River channel.

EARNEST NEWMAN: (Begins 1897—9 years old.)

P. 52—Levee 50 or 100 yards behind our house. Levee later moved 2½ miles back. P. 52—Timber outside main

shore, cottonwood and willow. P. 55—Willow and cottonwood on Newman's Towhead. P. 60—Knew of St. Francis' Chute. P. 65—A chute running up from Henderson. P. 68—St. Francis comes down the main shore, not in the Island. The current in high water will pass up through here. We call that St. Francis' Chute. P. 72—back to Island 98, water ran through the depression so he had to use a boat to get to the cattle, where the river afterwards cut through (1912 cut-off.)

GEORGE NEWMAN: (Begins 1893—7 years old.)

P. 79—St. Francis Chute, a depression at the original mainland and the bank—what bank there is left, is right there now. Timber on bar—cottonwood and willow—says the house was 100 yards from some-where and from the question indicates that it was on the bar, but his brother Earnest, and his uncle Beard, locates it on the main land 100 or 150 yards back from where the bar begins. P. 80—There was a depression that had no timber on it, beyond that was timber. Timber on Towhead was cottonwood and willow. Evidently this was the same depression that his brother spoke of (P. 72) when the 1912 cut-off was made.

E. T. PURNELL: (Born 1866.)

P. 422—Says there was virgin timber on the Island when he went there, 1880, oak, gum and cottonwood. P. 423—Boats did run up into the chute if they had freight for their place. P. 425—Testified from 1867 (when he was one year old). Island disappeared entirely in 1884 or 1885, during high water. Washed out entirely (in one or the other of these years). P. 426—In high water boats would make

the cut-off west of Island 98. P. 433—In high water boats used to make a cut-off through there (clearly speaking of the 1823 river channel). (Date 1878). P. 439—Chart 46—Survey was wholly in Warren County. P. 441—If the witness was shown Chart 46, it was wrong as he stated, because 46 did not show the Island 98 at all.) P. 442—Trip after his brother discussed P. 432-433 was fixed as in 1878. P. 458—Island went out entirely in 93-94-95, one of these years during high water. (If this evidence is true, it went out by an avulsion, and Mississippi title would not be affected. However Government Survey 1894, disproves him as to 93 and 94. P. 459—Boats ran chute between Island 98 and main Mississippi shore.

Captain Prince first became acquainted with that section of the river in 1897—P. 6.—Earnest Newman was born in 1888. Can remember as far back as 1897—P. 50—George Newman was born in 1886—P. 74—Can remember as far back as 1897—P. 50. George Newman was born in 1886—P. 74—Can remember as far back as 1893. I. B. Beard was born in 1866 but has never seen an island in that part of the river 'till the cut-off in 1912—P. 109. W. H. Reed began steamboating in 1897, was familiar with the river from 1900, was at Henderson a month or six weeks in 1894.

C. F. HUME: (Witness for defendant).

P. 297—Went to Chotard 1896. Remained there 'till 1907. It was an island in high water. P. 300—Steamboats ran west of the Island in high water. Following the old Mississippi River channel, could tell where the channel was

in low water, from the timber on the Louisiana side, and the low depression there with some small lakes. P. 301—Timber on Island—cottonwood and willow. P. 311—Timber on Island—cottonwood and willow. P. 312—Some cottonwood 3 feet in diameter (about 1909). P. 314—Says the store was right back of the landing (Chotard Landing) and the Island was west of the store. P. 321—Has known steamboats to go through that depression west of the Island in high water.

LAWRENCE TOWNES: (Fifty-nine years old.)

P. 346—Went to Chotard in 1880. P. 361—St. Frances Chute. P. 349—A part of the Island. Scruggs Island as he knew it had been there all the time. Boats would go both sides of the Island in high water. P. 370—St. Francis Chute filled up. P. 374—"I can't say that it was Newman's Point I Calls it Mississippi." P. 377—"I calls it, I would call it Mississippi." P. 377—"I calls it St. Francis' Chute." P. 378—All of Scruggs Island did not wash away in high water, there would be none, where I lived, but in low water there would be some of it there. (Just overflowed.)

E. J. ALBRITTON:

P. 383—Familiar in general way with the land involved in the litigation, Louisiana vs. Mississippi. P. 387—Sec. 21—Island 98. P. 388—Clay soil. The old channel (Chute Channel) was clearly discernable and east of that was small willow. P. 389—1823 river channel. P. 390—1823 river channel—Continued. P. 391—1823 river channel—Continued. P. 392—1823 River channel—Continued.

P. 393—1823 river channel—Continued. P. 394—Chute between Sec. 30 and 31 (Old Chotard Chute). P. 395—Chute and timber on Sec. 30. P. 396—Timber on Sec. 30. P. 397—Timber on Sec. 30 and 29. P. 398—The present river channel and timber on Section 21. Present river channel as related to Tullos Island. P. 402—Timber, soil, Island 98. P. 400-412.

E. J. Albritton testimony as to 1823 river channel supported by the following witnesses:

CAPTAIN PRINCE:

P. 33—Water backs up in 1823—river channel.

EARNEST NEWMAN:

P. 60—Knew of St. Francis' Chute. P. 65—A chute running up from Henderson. P. 68—"St. Francis' comes down the main shore, not in the Island, the current in high water will pass up through here, we call that St. Francis' Chute."

GEORGE NEWMAN: (Referring to St. Francis' Chute.)

P. 79—A depression at the original main land and the bank, what bank there is left, is right there now.

LAWRENCE TOWNES:

P. 361—St. Francis' chute. P. 370—St. Francis' Chute filled up. P. 377—"I calls it St. Francis' Chute."

E. T. PURNELL:

P. 432 and 433—Boats used to make the cut-off when the water was high. (The date is fixed as 1878 when he

went after his brother). (Questions and answers show clearly that he was talking about 1823 river channel.)

CAPTAIN REED:

P. 141, 145 and 146.

CAPTAIN WEST:

P. 202.

Captain Prince, Captain Reed and Captain West showing that the River at Albemarle Bend filled up after the cut-off of 1912, so that within three years the water ceased to flow through, and that it was entirely filled by 1920. That would enable a person to walk on dry land where the river had been five or six years before. The same thing could have happened to the river of 1823, and to the river of 1882, and the complainants have not proven that it did not happen. The evidence is strong that both rivers filled gradually, especially the 1823 river, as boats traveled the channel in high water as late as 1878—(Purnell P. 432-433)—and water flows through there in high water even yet.

CAPTAIN WEST: (P. 234.)

> "Q. Then you have sheet 45 covering one section of the river to sheet 46 covering the adjoining section of the river together and projected upon that the Section, Township and Range lines?
>
> A. Yes Sir, the sheet 45, however, covers all of the territory in question. Sheet 46 is merely added there for information as to the radical changes that had taken place in the river to the south of the territory in question.

Q. It does not cover quite all of it does it? Is not there where you pasted it together? Right there?

A. Yes Sir, that is right.

Q. This is sheet 45, and it comes down here to the North End of Island 98. Do you see here? Right there.

A. Yes Sir, the two sheets are put together so that you will have the whole thing before you. You unedrstand? Instead of having to try to adjust them on a table, they are put together just as one would have run into the other had both sheets been made on one piece of paper. They are adjusted by latitude and longitude.

Q. Both sections of that chart show the latitude and longitude?

A. Yes Sir."

(Comment: Defense Council objected to this Exhibit when it was offered but the Special Master based his report largely on this map, calling it Chart 46. If it is a fact that Chart 46 was pasted over Chart 45 up to the north end of Island 98 it does not correctly show the true situation.
I. B. BEARD: (Witness for complainant).

P. 111—definitely locates the Newman residence on the old main bank 100 or 150 yards back from the beginning of the bar. Cottonwood timber on the main bank between the house and the bar. P. 112—Timber on bar was all cottonwood and willow. P. 114—Did not know the place he called the towhead had ever been severed from the Louisi-

ana shore prior to 1912. No timber except cottonwood and willow on towhead.

CAPTAIN W. H. REED: (Witness for complainant).

P. 128—Acquainted with the river there since 1894. Was camped at Henderson a month or six weeks. P. 136—About 1900 he became acquainted with the channel of the river. P. 140—Would land at the foot of the Island, because there was slack water (1900). P. 141—Timber on towhead—cottonwood and willow. Talks about the Island in 1900. P. 141—The Mississippi River commenced to wash out the depression between this towhead and the main timber line on the Newman property, and it was washed out to quite an extent that year, and made the cut-off virtually, but did not clean it entirely out 'till 1913. (Supporting Captain Marshall). P. 143—Prior to cut-off 1912, he still talks of the Island. P. 145—Between the towhead and the old timber line there was a depression of white sand, and "I think in extremely high water some very small boats navigated that island, or depression. P. 146—More about the depression. Old channel began to fill up at the head of the island—at the head of Newman towhead. P. 147—Steamboats could go up and down that portion of the river designated as Albemarle Bend, for about four years after the cut-off of 1912. After 1916 even little boats could not pass through the North End. P. 149—Began steamboating 1897. P. 181—Newman towhead same location as part of Tullos Island. Began in 1897 was familiar with the river in 1900.

CAPTAIN WEST: (Witness for complainant).

P. 185-186—Mississippi River Chart 45 covers all the

land in litigation, but to show Township and Sectional connections, Chart 46 has been attached showing the lands south as far as Eagle Bend—(On this Chart 46 is where the Master gets his gum, oak and hackberry). P. 201—Speaks of Hopkin's Island and Island 98 as being the same island. P. 202—River by Albemarle Bend filled at the north end in two or three years so that no flow passed around by Albemarle Bend, except in high water. P. 218—The survey 1894, did not take in the topography. It only took in the change in the position of the river alone. P. 223—Explanation—Exhibit 1, and G, H, I, J. P. 225—The word accretions—where he got it. P. 227—Conflicting evidence as to river. P. 228-229—1894 survey again. P. 234—Chart 45 covers all the territory in question. Sheet 46 is merely added there for information as to radical changes that had taken place in the river to the south of the territory in question. (While sheet 45 covers all the land in question, and sheet 46 shows none of the land, the sheet 46 being wholly as to Mississippi, in Warren County, it apears that sheet 46 was pasted over sheet 45 up to the north end of Island 98, which would cover Island 98, and show land in Warren County instead.

JOSEPH V. DeLAHUNT: (Seventy years old).

P. 475—Says that in 1897 he ran a loaded steamboat right over the top of Island 98. (Every witness in the case says that Island 98, or Newman's towhead was there in 1897, so if the Captain is right, there must have been extra high water at the time). P. 477—Could not land at Island 98 at all. (Captain Reed and Captain Prince landed there because there was slack water.) P. 478—Says

that Island 98 disappeared entirely in 1897, or 1899. (He admits then that the Island was there up to 1897. All other witnesses say that it was growing larger rapidly, at that date). P. 480—Could go over the bank or any where in high water. P. 486—Says he sunk "Kate Dixon" at Hopkins Island, but had previously said that he sunk the "Kate Dixon" at Mayersville.

WILLIAM MILLER:

P. 497—Island 98 did not all wash away. The lower end all washed up, the upper end did not wash off. After the washing stopped, it built back in same place.

EXHIBITS

Defendants exhibits A, N, and R, pages 162-168 were placed in evidence for the purpose of showing that from the time of the earliest governmental survey the State of Mississippi had exercised acts of dominion over and claimed as its own, the property here in question. The state of Louisiana neither exercised, nor attempted to exercise in any way, dominion or control over the property at any time between the date of the earliest survey and the present time.

Defendant's exhibit "A" is a certified copy of the land assessment rolls of Issaquena County, Mississippi, covering assessments of the lands here in controversy from the year 1848 to 1926. During this entire period of time these lands were assessed by Issaquena County for taxation and appear on its tax assessment rolls. The assessment shows that the property, and especially Island 98 or Tullos Island, during the period of time for which the State of Louisiana claims the island to have been completely washed away, that is be-

tween the years 1882 and 1894, was continuously assessed on the tax rolls of that County. The assessments also show by the varying number of acres assessed, that the ravages of the river on the island were considered.

WHAT THE EXHIBITS SHOW

Defendant's Exhibit "A" is a certified copy of the land assessment rolls of Issaquena County, Mississippi, covering assessement of the lands here in controvesry from the year 1848 to the year1926. During this entire period of time, a part of sections 20, 21, 28 and 29 were assessed. The assessment roll shows that during this time these lands, in fact, were an island; and on the rolls, in a number of cases, after the sectional description of the lands appear the word "island." The number of acres comprising the territory assessed varied from year to year, as new assessments were made. At no time during this period do the assessment rolls leave off all of the territory originally surveyed as Tullos Island.

Defendant's Exhibit "B" is a certified copy of the record of lands sold to the State of Mississippi for delinquent taxes in Issaquena County, covering the territory here in question. This exhibit shows that in the years 1869, 1879, 1880, 1881, 1888, 1890, 1891, 1895, 1897, 1898, 1900, 1901, 1902, 1906, 1907, 1912, 1915, 1922, 1923, 1924 and 1925 part of the lands here incontroversy were sold by the State of Mississippi for delinquent taxes.

Defendant's Exhibits, "G," "H", and "I" are certified copies of the assessment roll of East Carroll Parish, Lou-

isiana, showing assessment of Willow Point plantation for the year 1876 to 1926. These assessments show that the State of Louisiana during this period of time assessed for taxation no part of the land here in controversy, either as lands originally surveyed, or as lands attached by accretion to the original survey of the township in which Willow Point was located. These exhibits show that in 1876 Willow Point was assessed for taxation with the number of acres as 719. That in 1880 the assessment was reduced to 640 acres, and in 1882 to 563 acres. That in 1886 the assessment was reduced to 375 acres, in 1889 to 259 acres, in 1906 to 150 acres, in 1907 to 50 acres, and in 1912 was assessed as 160 acres, which is the present assessment.

Defendant's Exhibit "J" is a certified copy of a deed from Mrs. Annie E. Newman to Walter A. Newman dated the 26th day of October, 1882, being a deed conveying a portion of Willow Point plantation. This deed contains the following provision:

> "It being well understood by vendor and vendee that by reason of the caving of the banks of the river, the said Willow Point plantation, according to recent surveys has been reduced in quantity to 600 acres.

Defendant's Exhibit "K" and "M" are tax deeds executed by the sheriff and tax collector of East Carroll Parish, Louisiana, selling a part of Willow Point plantation for the non-payment of taxes for the years 1893 and 1907.

Defendant's Exhibit "L" is a certified copy of a deed

from J. S. Milliken to J. A. Craig conveying part of Willow Point plantation.

Defendant's Exhibit "N" is a certified copy of power of attorney and deed from George R. Newman, et al, to Rufus H. and Andrew B. Learned, conveying a part of Willow Point plantation.

These deeds were introduced in evidence for the purpose of showing that neither the State of Louisiana, nor the owners of Willow Point, at any time until the filing of this suit, claimed any part of the lands which are here in controversy.

Exhibits 1 and 2 (R. p. 170-171) are United States Land Office township maps with Mississippi river banks in Louisiana, (1824) and in Mississippi (1823) sketched.

Exhibit 3 (R. p. 171), Complainant's Exhibit "C", Mississippi River Commission Sheet 17, merely is a small scale 1 inch equal one mile, map for non-technical use, made by reduction from the Charts 45 and 46, Survey 1882, scale 1:20000, which are a little more than three times larger than the small scale sheet. Sheet 17 shows the general outline of the river from mile 562 to 595; that is the shore line of main banks and the bars. Also the general features of the land such as the names of owners, timbered or cultivated; location of levees, property lines, parish lines, landings, names of river bends and large lakes, but no details, Government lights, reference points, contours, elevations or soundings. Willow Point is shown in Louisiana about mile

567 and Chotard Landing in Mississippi about mile 571, with Tullos Island divided into two parts, the lower marked Island No. 98, lying on the Mississippi side between the Point and the Landing. Lack of exactness in detail is evidenced by the difference in the bar line opposite Chotard, as shown on Sheet 17 and on Chart 46, Exhibit 6 C. The indentations of the bar lines shown on the larger scale chart 46, do not appear on Sheet 17, though the small scaled map was made from the larger ones and published in 1883, one year after the large 1882 maps issued.

Testimony of Capt. H. M. Marshall states (R. p. 175), "The mail boat landed at Albemarle Landing against the levee during high water of 1890." showing the width of the chute from the levee over to the upper Tullos Island which was there then. (Both upper and lower Tullos Island were there and the blue print shows the width of the chute was 2,000 feet from the levee to the trees on the upper Island. That is half the width of the river from Willow Point across to upper Tullos Island in Section 20).

The close approach of the widened chute to the lower end of the 1888-9 levee compelled the building, after high water of 1890, of an extension levee from the rear lower angle of the 1888-9 levee down the chute 3,500 feet to the 1883 levee at the head of lower Tullos Island. This was followed in 1892, by building a new levee from the rear lower corner of the 1890 levee down over two miles to the levee at Chotard. This shows that including 1888-9 and 1892 working seasons, a complete new levee was built around Albemarle Bend with the levee above Albemarle set back 3,000

feet from the east bank of the chute and set back 2,000 feet from the chute bank below Albemarle. In 1893 a loop a mile long was built to cover threatened levee breach at the junction of the 1888-9 and 1890 levees. When the 1894 survey was made, nearly all of 1888-9 and 1890 levees covered by the 1893 loop had caved into the river, and the main bank of the Mississippi shore in 1894 was 6,800 feet east of the east bank of Mississippi River in 1882 where the river then was flowing along the west side of Tullos Island. The blue print shows the main Mississippi shore in 1906 when this blue print tracing was made by Captain West 1000 feet east of the Mississippi Shore in 1894.

ARGUMENT

There is little difference between complainant and defendant in their conceptions of the law of accretion and avlusion. As applied to this case, counsel are agreed on the proposition that where a navigable river is the boundary line between states, and the channel of navigation is changed by nature, or gradual processes known as erosion and accretion, the boundary follows the varying course of the stream, but that where an evulsion occurs in such stream, the resulting change in the channel does not change the boundary, but that it remains in the middle of the old channel as it existed prior to the avulsion.

Nebraska vs. Iowa, 143 U. S., 539, 36 L. ed. 186,

Missouri vs. Nebraska, 196 U. S. 23, 49 L. ed. 372,

Arkansas vs. Tennessee, 246 U. S. 158, 62 L. ed. 638,

Oklahoma vs. Texas, 260 U. S. 606, 67 L. ed. 428.

These propositions will be, therefore, in this brief referred to as settled law. There are other legal propositions, however, which counsel for defendant conceive to be material to the determination of this cause, and these propositions will be discussed in their relation to the testimony in the case, treating such testimony as nearly as possible in chronological order.

I

1823-1882

The burden of proof in this case is upon the complainant. The fact that there is involved a disputed boundary line between two states does not change the general rule of law in this respect; the same rule being followed as is applicable in the determination of boundary suits between private individuals.

Rhode Island vs. Massachusetts, 12 Peters, 734, 9 L. ed. 1233.

Nor does the fact that the boundary here in dispute is found in running water vary the general rule in this regard, it being well established that in cases of this character the same rules of law with reference to accretion and avulsion are recognized as in cases between individuals.

City of New Orleans vs. United States, 10 Peters, 662, 9 L. ed. 573,

Nebraska vs. Iowa, 143 U. S. 593, 36 L. ed. 186,

Missouri vs. Nebraska, 196 U. S. 23, 49 L. ed. 372,

Arkansas vs. Tennessee, 243 U. S. 158, 62 L. ed. 683.

The rule is also settled that there is a presumption in favor of the permanency of boundary lines, and where a party asserts material changes in the course of a boundary river such as will affect the boundary line, the burden is upon him to prove such changes.

State of Tennessee vs. Muncie Pulp Company, 119 Tenn., 47, 104 S. W. 437,

Oklahoma vs. Texas, 260 U. S. 606, 67 L. ed. 428.

Counsel for complainant in their brief apparently admit the foregoing to be a correct statement of the law, their original brief at page 120 containing the following:

> "While the burden of proof to show the changes in the original boundary is on the one alleging the change complainant has fully discharged such burden."

It is elementary law that before riparian rights can attach to land, the land itself must be contiguous to the water, actual contact therewith being necessary.

Farnham on Water and Water Courses, Vol. 1, p. 304,

Kinney on Irrigation and Water Rights, Vol. 1, pp. 760 and 761,

Saulet vs. Shepherd, 4 Wallace 502, 18 L. ed. 446,

Posey vs. James, 75 Tenn. (7 Lea) 98,

Fulton vs. Frandoley, 63 Tex. 330,

Nugent vs. Mallory, 145 Ky. 824, 141 S. W. 850,

Wilson vs. Watson, 144 Ky. 352, 138 S. W. 283, Ann. Cas. 1913-A, 774.

Where a party claims lands as accretions, the burden, therefore, is not only upon him to establish the fact that the lands were, in fact, formed by accretion, but he also has the burden of proving that such accretions attached to lands which belonged to him and were contiguous to the water.

Green vs. Witten, 200 Ky. 725, 255 S. W. 519,

Tillotson vs. Fulp, 172 N. C. 499, 90 S. E. 500,

Mann vs. Archbell, 186 N. C. 72, 118 S. E. 911,

Ball vs. McDuffy, (Tex. Civ. App. May, 1919) 212 S. W. 844,

Producers Oil Company vs. State, (Tex. Civ. App. May, 1919) 213 S. W. 349,

Land vs. Dunn, (Tex. Civ. App. Nov. 1920), 226 S. W. 801,

Lennox vs. Isbell (Tex. Civ. App. Dec. 1922), 245 S. W. 728,

Petty vs. Oil Company, (Tex. Civ. App. Oct., 1923), 254 S. W. 565.

From the foregoing authorities, it is evident that before the State of Louisiana could establish its case it is not only necessary that it *overcome the presumption that* boun-

dary lines once established are permanent, but it also must meet the burden of proof and establish by a preponderance of the evidence, the following facts:

1. That accretions were added to territory on the westward side of the Mississippi River.

2. That these accretions were added to Louisiana territory, or, in other words, that Louisiana territory at the time the accretions were formed, was contiguous to the water.

The defendant, State of Mississippi, contends that the complainant has failed to meet the burden imposed upon it in each of the two foregoing particulars. As has been stated in the foreoging pages of this brief, testimony of complainant's witness, Charles H. West, shows that between the years 1824, when the first survey of the Louisiana territory at the point in question was made, and the making of the map of the Mississippi River Commission in 1882, the river had moved its channel eastward about a mile and one half. The presumption being that boundary lines once established are permanent, it was incumbent upon the State of Louisiana to prove by a preponderance of the evidence that this change in the channel of the river between these years was the result of accretion rather than of avulsion. If the change was the result of accretion then the boundary followed the river, while if the change was caused by avulsion, the boundary remained fixed as it was prior thereto. In order to meet the burden imposed upon it in this respect and to prove that the river moved its channel gradually and to the eastward from its 1824 to its 1882

location by accretion, the complainant introduced only one witness Charles H. West. The testimony of this witness is discussed in the preceeding pages of the brief, and for that reason will only be touched lightly at this point. The witness does not testify from personal knowledge, but only from the maps introduced in evidence as exhibits to his testimony, they being the 1824 governmental township plat of the Louisiana territory at the point in question; (Complainant's Exhibit A); a blue print prepared by himself purporting to show the Louisiana shore line in 1866 (Complainant's Exhibit "G"); a map of Hopkins Island, an island in the river in the vicinity of the territory in question (Complainant's exhibit "BB"); and Mississippi River Commission Chart Number 45, Survey of 1882 (Complainant's Exhibit "M"). The purported map of 1866, R. p. 147, was not introduced in evidence, and the blue print based on such was not admissible in evidence, because not founded upon any facts disclosed by the record, and being in effect hearsay evidence. The 1870 map of Hopkins Island, R. p. 148, did not purport to be a map of the shore line of the river but only of the island itself. With these maps furnishing the basis of his opinion, the witness testified that the Mississippi River gradually moved to the eastward by erosion of the Mississippi shore, and the Louisiana shore line progressively followed it, building by accretion, until it reached its 1882 channel.

This is the only testimony which is offered by the complainant to overcome the presumption that the 1824 boundary line was permanent and to meet the burden imposed upon it of showing how the river moved from its 1824 to its

1882 channel. The weakness of this testimony is evident when it is considered that all of this witness's testimony was opinion evidence, highly speculative and based upon facts of no evidentiary value. Especially does it seem weak and unconvincing when the testimony of other witnesses, both for complainant and defendant, describes the physical conditions and surroundings in this area between the location of the 1823 channel and the 1882 channel.

Complainant's witnesses, George Prince, R. p. 39, George Newman, R. p. 55, 56, 58, 59 and 60, and defendant's witnesses, Lawrence Townes, R. p. 232, 233, and Etna J. Albritton, R. p. 245, 248 and 251, all testify that they are familiar with a depression in this area on the Louisiana mainland running in the approximate location of the river channel of 1823. This depression is known locally as "St. Francis Chute", and the defendant's witnesses testify that it is known as the old river channel of 1823. The defendant's witness, Allbrittian, with a surveyor located this old channel showing it to be in practically the same location as the river channel in 1823. His testimony shows that the bank line of the old channel was clearly discernable on each side for a great part of the way along the chute, R. p. 245, 248, 251, and that in times of high water it was filled from its northern to its southern limits. Chart 45 of the 1882 Survey and Chart 47 of the 1913-1915 Survey both clearly show this old river channel although not designated thereon by name.

The fact that this old river channel is clearly discernable is positive proof of the fact that the river had not changed

its location from its 1823 to its 1882 channel by accretion. It is common knowledge that if this change had been by accretion, both banks of the old channel could not remain, because as the accretion would gradually build to the shore and as the river would gradually move to the eastward, the east bank of the river would necessarily be worn away and destroyed. Where both banks of the old river are shown to still be in existence as is the case here, then there is no conclusion to be reached other than that the river suddenly and violently changed its course so as to leave the old river bed dry and the banks on each side still standing.

The case of *Simpson vs. Martin*, 174 Ark., 956, 298 S. W. 861, on its facts is practically identical with the case at bar. In that case the court said:

> "It is the contention of the appellant Simpson that the south bank of the river gradually caved and washed away until the bend of the river had entirely disappeared, and that, as this was done, the north bank gradually moved southward by the accretions to that shore, and that the original lands to which appellees had a record title gradually disappeared and became a part of the channel of the river, until finally the accretions to appellant's lands occupied the area which once comprised the land of appellees, together with other lands contiguous thereto and south thereof, all of which appellant Simpson claims as an accretion to his land."
>
> "Appellees deny that these lands were an accretion to appellant's land. On the contrary, they assert their land never disappeared through the action of the river, but has remained as original

land at all times since the Government survey, which was made in 1826, and, in addition, they say they have title to certain lands also involved in this litigation as an accretion to their own land. They also say that at some time subsequent to 1826, the river changed its course as the result of an avulsion or cut-off, and the court below sustained this contention, and entered a decree accordingly, and, upon this finding of fact, apportioned to appellees and certain other riparian owners the accretions to lands which are south of the river according to the survey of 1826. The apportionment of this accretion was one of the subjects involved in the cases consolidated with the case here appealed, but, as the parties to those suits have not appealed, we need not consider this feature of the case.

The appeal of the appellant Simpson does raise the question of the correctness of the court's finding of fact, but the appeal presents no other question than this question of fact, except only the question of law as to the burden of proof concern the manner in which the river changed its course.

The question for decision may therefore be stated as follows: Did the river leave the bend shown by the survey of 1826 by the process of accretion, or by an avulsion or cut-off?

In a case presenting many issues of fact similar to the present case, the Supreme Court of Tennessee, in the case of *State vs. Muncie Pulp Co.*, 119 Tenn. 47, 104 S. W. 437, held (to quote a syllabus), that 'the presumption is in favor of the permanency of boundary lines, and the burden of proof is on the one averring that the location of the line has been changed by the action of the

forces of nature.' See also 9 C. J. 271, and *Bissell v. Fletcher*, 27 Neb. 582, 43 N. W. 350.

Inasmuch as appellees are in possession of land shown to be land by the original Government survey, the patents from the United States to the State of Arkansas, and from the State to appellees' predecessor in title, we think the burden was upon appellant to show that the land described as such disappeared and later formed as an accretion to his own land, and this would be true whether he was the plaintiff or the defendant in an action in which that question arose."

In the case of *Baumhart vs. McClure*, 21 Ohio, App. 491, 153 N. E. 211, title to a certain lot bordering on Lake Erie was involved. This lot was surveyed in 1837 and appeared on the tax rolls from 1837 to 1853, from which time until shortly before the filing of the suit, it was under the waters of the lake. When the lot reappeared, the holder of the title entered upon the same claiming it as his own. The owner of the lot abutting thereto brought suit, claiming that this lot as restored was added to his lot by accretion, and, therefore, is his own. There was no proof in the record showing whether this lot was washed away gradually by erosion or whether it suddenly disappeared as the result of an avulsion. The court in holding that the plaintiff must fail because he had not met the burden of showing how the disappearance of the lot occurred, had the following to say:

"In view of the fact that the defendant has a connected chain of title to lot 434 by deed of conveyance, the burden of proof rests on the plaintiff

to show such a state of facts as would deprive the defendant of that title. As a riparian owner may gain land by accretion of reliction, so he may likewise lose land by the slow process of erosion, and, if the land owned by the defendant, and her predecessors in title, was taken from them by the slow process of erosion, it would ordinarily be forever gone. This, however, would not be the case if lot 434 was washed away by a storm or storms resulting in a sudden avulsion."

The case of Oklahoma vs. Texas, 260 U. S. 606, 67 L. Ed. 428, was a suit by Oklahoma against Texas to establish a portion of the boundary line between the two along the Red River. The boundary between these two states is a part of an old one between the territories of the United States and the Spanish Possessions to the southwest, which was defined in the Treaty of 1819 and ratified in 1821. The court construed this boundary to be on the south bank of the Red River as it existed in 1821, subject to application of the doctrines of erosion and accretion and of avulsion to any intervening changes. The State of Oklahoma contended that the channel of 1821 was different from the channel as it exists today, and that it is entitled to territory which is now south of the present banks of the river. There were no maps, surveys or records made of the river showing the situation existing in 1821, nor were there human witnesses to testify relative to the situation at that time. In passing on the question of whether there had been a change in the channel of the river, by avulsion as contended by Oklahoma, the court said:

"Common experience suggests that there probably have been changes in this stretch of the Red

> River since 1821, but they cannot be merely conjectured. The party asserting material changes should carry the burden of proving them, whether they be recent or old. Some changes are shown here and conceded. Others are asserted on one side and denied on the other."

Under the authority of the foregoing cases, the State of Mississippi earnestly contends that the State of Louisiana has failed to prove by a preponderance of the evidence that the Mississippi River changed from its 1823 to its 1882 channel as a result of accretion.

Not only is this proof insufficient to overcome the presumption of the permanency of boundary lines and to prove by a preponderance of the evidence that the boundary shifted as alleged by the complainant, but the proof offered by the defendant with reference to the physical facts and circumstances is so strong and it so thoroughly refutes and contradicts the opinion evidence of the only witness for the complainant as to show practically beyond dispute that this change was a result of avulsion.

If this be true, then the entire case of the State of Louisiana must fail because its base has not been established; there being no proof that accretions ever attached to land which in fact belonged to the State of Louisiana. In other words, the State of Louisiana even though it showed that accretions attached to the western shore subsequent to the year 1882, yet has failed to prove that they attached to land belonging to Louisiana and contiguous to the river.

II.
1882-1913

All of the testimony offered by complainant with reference to accretions attaching to the west shore of the river, is given regarding conditions existing subsequent to the year 1882. The contention of complainant and its entire case in this regard is based on the assumption that Tullos Island completely washed away, and that the Mississippi River moved eastward over the site of the island; adding by accretion to Willow Point in the State of Louisiana; that later the river made a cut-off across the accretion leaving a new island—Newman Towhead, in Louisiana. If the complainant has established these facts, then under the rule laid down by this court in the cases of Iowa vs. Nebraska and Arkansas vs. Tennessee, supra, the territory in question belongs to Louisiana, provided the complainant has first established its contention discussed in subdivision I of this argument.

The contention of the defendant is that Tullos Island did not wash away, but that the channel around the island changed from the west side to the east side thereof, the old channel filling up until the island became connected to the Louisiana shore; that it then continued to grow by accretions added thereto on its eastward side until the year 1912, when the river returned to its old 1882 channel leaving this territory again an island but greatly enlarged by reason of the accretions added thereto. If these facts be established by the evidence, then Tullos Island, or Newman Towhead, as it is designated on Chart 47 of the Mississippi River Commission Survey of 1913-15, is Mississippi terri-

tory; the change in the channel of the river around the island not affecting the boundary line between the states.

Missouri vs. Kentucky, 11 Wallace 395, 20 L. ed. 116,

Indiana vs. Kentucky, 136 U. S. 1, 34 L. ed. 329,

Arkansas vs. Tennessee, 246 U. S. 158, 62 L. ed. 638.

In the case of *Missouri vs. Kentucky*, supra, the question for determination was the establishment of a part of the boundary line along the Mississippi River between the states of Missouri and Kentucky. The territory in controversy was Wolf Island, which at the time of the filing of the suit, was on the Missouri side of the main channel of the river. The case turned on the proposition of whether or not at the time the territory of Kentucky was formed with her boundary on the west fixed as the middle of the Mississippi River, Wolf Island was on the Missouri side, or on the Kentucky side of the middle of said river. The court laid down the following rule of law governing the case:

> "It follows, therefore, that if Wolf Island, in 1763, or in 1820, or at any intermediate period between these dates, was east of this line, the jurisdiction of Kentucky rightfully attached to it. If the river has subsequently turned its course, and now runs east of the island, the status of the parties to this controversy is not altered by it, for the channel which the river abandoned remains, as before, the boundary between the States, and the island does not, in consequence of this action of the water change its owner. Heffter, p. 143, sec. 66; Caratheodery Du. Droit Inter., p. 62."

In the case of *State of Indiana vs. State of Kentucky*, supra, the question involved was the ownership of what is known as Green River Island, which at the time of the filing of the suit was connected to the Indiana shore by an old filled-up channel of the Ohio River. When Kentucky was created as a territory, its northern boundary at the point in question as defined in the act of creation was construed by the court to be the low water mark of the Ohio River on the north side of the channel. At the time of the creation of the territory the channel of the river ran between Green River Island and the Indiana shore. By a subsequent change in the river, however, this old channel was abandoned and became filled up so that the island was attached to the Indiana mainland. Under these facts, the court laid down the following rule as governing the case:

> "If when Kentucky became a State on the 1st of June, 1792, the waters of the Ohio River ran between that tract, known as Green River Island, and the main body of the State of Indiana, her right to it follows from the fact that her jurisdiction extended at that time to low-water mark on the northwest side of the river. She succeeded to the ancient right and possession of Virginia, and they could not be affected by any subsequent change of the Ohio River, or by the fact that the channel in which that river once ran is now filled up from a variety of causes, natural and artificial, so that parties can pass on dry land from the tract in controversy to the State of Indiana. Its waters might so depart from its ancient channel as to leave on the opposite side of the river entire counties of Kentucky, and the principle upon

which her jurisdiction would then be determined is precisely that which must control in this case."

In the case of *Arkansas vs. Tennessee*, supra, the court held that where the Mississippi River suddenly abandoned its old channel and formed a new one, as a result of which the old channel filledup and became land, the filling up of this old bed should not be treated as accretion, but as the ultimate effect of avulsion. On this proposition the court had the following to say:

"Certainly it can not be regarded as having the effect of carving out an exception to the rule that where the course of the stream changes through the operation of the natural and gradual processes of erosion and accretion, the boundary follows the stream; while if the stream leaves its former bed and establishes a new one as the result of an avulsion, the boundary remains in the middle of the former channel. An avulsion has this effect whether it results in the drying up of the old channel or not. So long as that channel remains a running stream, the boundary marked by it is still subject to be changed by erosion and accretion; but when the water becomes stagnant, the effect of these processes is at an end; the boundary then becomes fixed in the middle of the channel as we have defined it, and the gradual filling up of the bed that ensues is not to be treated as an accretion to the shores, but as an ultimate effect of the avulsion. The emergence of the land, however, may or may not follow, and it ought not in reason to have any controlling effect upon the location of the boundary line in the old channel."

From the foregoing, it is evident that the gist of this case, insofar as conditions existing subsequent to the year 1882 are concerned, is whether or not Tullos Island or Island 98, entirely disappeared.

Complainant in their original brief at page 89 thereof attempt to show that Island 98, or Tullos Island, did entirely disappear. As proof of this statement, the court is cited to Mississippi River Commission Chart 45, Survey of 1882 (Complainant's Exhibit "M"); sheet 17 of the Mississippi River Commission Survey of 1882, with the shore lines of 1894 drawn thereon in red (Complainant's Exhibit "C"), and the testimony of the witnesses, E. T. Purnell, Captain Joseph V. De La Hunt, Captain Charles H. West, Captain George Prince, Captain W. H. Reed, Ernest Newman, George R. Newman and William Miller. These references made by counsel to the proof in the case will here be discussed in the order presented by them.

Complainant's Exhibit "M," Mississippi River Commission Chart 45, Survey of 1882, shows that Tullos Island, or Island 98, was in existence at that time. This chart also shows another island located to the northwest of Island 98, and not named on the chart. Captain Marshall, in his testimony, refers to these two islands as upper and lower Tullos Islands. R. p. 171, 175. There is no dispute but that both of these islands were Mississippi territory at the time the chart was made in 1882. This is shown most clearly by complainant's exhibit "M" where on Chart 45, complainant's witness West has superimposed the Mississippi 1823 and the Louisiana 1824 governmental surveys.

This exhibit shows that the greater part of both upper Tullos Island and lower Tullos Island, or Island 98, as shown on the 1882 chart was a part of original Tullos Island as surveyed in 1823. It is of importance that these facts be kept clearly in mind, because of the confusion which otherwise would come about due to certain witnesses referring to upper Tullos Island by the name of Hopkins Island.

Counsel for complainant first refer to the testimony of E. T. Purnell, R. p. 264, 265, 271, 283 and 286. The gist of this testimony is merely that in 1893, '94 or '95, Island 98, or lower Tullos Island disappeared. Even though this testimony was undisputed and conceded to be true, yet unless the complainants have also shown that upper Tullos Island washed away, then their case must fail. That this island did not wash away is conclusively shown by the testimony of this very same witness. He refers to upper Tullos Island by the name of Hopkins Island. In order, however, to clearly determine what the witness meant by "Hopkins Island," counsel for defendant referred him to complainant's Exhibit "H" which showed the position of Hopkins Island as surveyed by Louisiana in 1869 and 1870, superimposed in dotted lines on blue print of the 1882 survey. (The Hopkins Island surveyed by Louisiana in 1869 had entirely disappeared and was in the bed of the river when the 1882 River Commission Chart was made. See testimony of Charles H. West, R. p. 140.) The witness when shown the blue print pointed out upper Tullos Island, marked on the blue print "high bar," as being what he knew as Hopkins Island, R. p. 277.

The testimony of this witness shows that upper Tullos Island, known to him as "Hopkins Island," never washed away. R. p. 275. This witness also testified that the channel of the river changed about Hopkins Island. R. p. 276.

N. B.: This witness's testimony is very significant and when analyzed goes far toward establishing the theory and proving the case of the defendant. The only point of difference between his testimony and that of witnesses for defendant is that this witness testified that lower Tullos Island completely washed away, while defendant's witnesses show that neither upper nor lower Tullos Island was destroyed. Even taking his testimony as true, it has only been shown that lower Tullos Island washed away, but that the channel of the river changed around upper Tullos Island, which did not wash away. If such be the true facts, then the theory of defendant has been established.

The next witness referred to by counsel in their original brief is Joseph V. De La Hunt. R. p. 292, 293, 294, and 295. The testimony of this witness, as the court will see, more firmly establishes and proves the defendant's theory than did that of the preceding witness.

Captain De La Hunt testified that Island 98, or Lower Tullos Island, completely disappeared. His testimony is equally as positive that upper Tullos Island, or Hopkins Island, or Hopkins Tow Head, as known to him, never disappeared. R. p. 298. His testimony is also to the effect that there was no channel to the west of Hopkins Island, or Hopkins Tow Head.

N. B.: This testimony carries to its logical conclusion that of complainant's witness, Purnell, who stated that the channel changed about Hopkins Island. This witness (De La Hunt) shows that the old channel west of Hopkins Island had filled up. It also bears out and supports the testimony of Captain Marshall to the effect that the channel of the river cut around to the north and east of upper Tullos Island, abandoning its old channel to the west of upper Tullos Island, which filled up so that the island became connected to the Louisiana shore.

The complainant's witnesses, Captain George Prince, R. p. 25, 26, 33 and 34; Captain W. H. Reed, R. p. 110, 120, 121, 122 and 128; Ernest Newman, R. p. 54, 55, 57, 58 and 63, and George R. Newman, R. p. 73 and 74, knew nothing about Island 98, it being undisputed that at the time to which their testimony was directed, i. e., subsequent to 1894, there was not an island in the main channel of the Mississippi River at the point in question; it having been attempted by complainant to show that prior to that time, Island 98 had disappeared, and by the defendant that the channel had gone around the islands to the north and east and they had become connected to the Louisiana shore by the old filled-up river bed. For this reason, their testimony concerning the existence or non-existence of the island and whether or not it disappeared is worthless except insofar as it related to the physical facts existing on the tow head, or island, at the time of their observation. All of these witnesses are familiar with the depression running between Willow Point and the island at that time. R. pp. 39, 63, 69, 107, 108.

The witness Reed was also familiar with the place on the island, or towhead, where there is a high bank with cottonwoods growing on the top and a new deposit of soil at the bottom of the bank with willows on it. R. pp. 124 and 125.

N. B.: Captain Marshall's testimony shows that the depression referred to by these witnesses was the old filled-up 1882 river channel. R. pp. 172, 173, 178; and the defendant's witness, Albritton, shows that the high bank with a new deposit at the bottom referred to by complainant's witness, Reed, was the west bank of the old 1823 island chute. R. p. 38.

Counsel for complainant next refer to the witness William Miller as testifying to the fact that Tullos Island completely disappeared. This witness not only failed to testify that the island disappeared, but he testified positively that it did not disappear, but that it was there in 1916 and was there "this Sunday. I saw it Monday. I pass it once or twice a week." R. p. 304.

The only other witness referred to by counsel in their brief as testifying that the island washed away is Captain Charles H. West. This witness was evidently the star witness on whom complainant pinned its hopes and faith, and references are made to his testimony reverently, and the facts testified to by him are referred to as proven, because "*ipse dixit.*"

This witness testifies that Island 98 completely washed away and disappeared, and that Willow Point by accretion

built over the location which formerly had been occupied by the island. R. p. 143 and 144. He bases this testimony upon two maps, one Chart No. 45 of the Mississippi River Commission Survey of 1882 (Complainant's Exhibit "M") and Sheet 17 of the Mississippi River Commission, which is a small scale map of the 1882 survey with the shore line of the 1894 survey superimposed thereon in red lines. (Complainant's Exhibit "C.") The gist of this testimony merely is that because the shore line of 1894 was east of the shore line in 1882, it necessarily had moved to its 1894 location as a result of accretion.

This witness was unaware of the fact that the 1894 survey contained the same character of detail and was similar in all respects in its preparation to Chart 45, Mississippi River Commission Survey of 1882. This fact possibly accounts for his using the small scale Sheet 17 rather than the original field or work sheets of the 1894 survey in giving his opinion testimony regarding the change in the channel of the river. It is inconceivable that had the witness had the benefit of the work or field sheets of the 1894 survey showing all details of elevation and contours that he would have fallen into the glaring error that he did.

Counsel for complainant, either by blindly following Captain West's testimony with reference to the non-existence of the detailed survey of 1894, or by failing to examine Defendant's Exhibits, 4-A-B-C, or if having examined them by making only a superficial examination of the same, have fallen into the same error as Captain West. Their brief is replete with statements as to the ignorance of Cap-

tain Marshall in assuming that there was a detailed topographical survey in 1894. Captain West in his testimony says:

> "The survey of 1894 did not take in the topography. It only took in the change in the position of the river alone, and that survey was printed on the Charts of the 1882 survey." R. p. 151.

On being asked about the original field or work sheets, the witness West again denies the existence of a detailed survey in 1894 and states that if these sheets were obtained only the shore line would be shown thereon. R. pp. 157, 158.

Counsel in their original brief at page 49, in referring to this testimony of the witness West, say the following:

> "Comment: This shows there was no topographical survey between 1882 and 1913."

On page 58 of the brief counsel in referring to the testimony of Captain Marshall explaining what Exhibits 4-A-B-C, blue prints of the original work sheets of River Commission Survey of 1894 show, said:

> "This testimony is without foundation. The survey of the Mississippi River Commission need only be examined to show its fallacy."

Again at page 61 of the brief counsel say:

> "The witness was evidently ignorant of what the survey of 1894 showed, and had assumed that the survey of 1894, like the survey of 1882, showed the topography and elevation, when it did nothing

of the kind, but showed only the changes in the position of the river alone."

Again at page 66 of the brief counsel say:

"Comment: The error of the witness in this regard has heretofore been explained. He evidently did not know that no new chart was made from the survey of 1894, but that this survey was superimposed on the chart of 1882. (R. p. 149, 151, 152.)

"All the testimony of Mr. Marshall showing topographical elevations, etc., in 1894 is based on the error which arose from his using the chart of the survey of 1882."

On page 67 of the brief, counsel say:

"Certainly these deductions of Captain Marshall, based on the errors of fact and ignorance of what the survey of 1894 shows can not overthrow the testimony of eye-witnesses to the fact that Island 98 entirely disappeared, especially when such testimony is shown to be true by the survey of the Mississippi River Commission of 1894."

On page 97 of complainant's brief, counsel say:

"Captain H. M. Marshall was evidently partly in error in assuming that the chart of the survey of the Mississippi River Commission in 1894 showed the topography and elevations of said year, when as a fact, the contour lines on said chart were of land that existed in 1882 and had largely disappeared in 1894."

Since the testimony of Captain West and of Captain Marshall is so directly antagonistic, and since the testimony

of each of them is so important for the determination of the deciding factor in this case, that is,, whether or not Tullos Island completely washed away, it becomes of the utmost importance that it be determined which of the witnesses is correct with reference to their statements concerning the Mississippi River Commission Survey of 1894. If Captain West's testimony that there was not a detailed topographical survey of 1894 be correct, then his testimony to the effect that the change in the channel was the result of erosion on the Mississippi shore and accretion to the Louisiana shore is of value because there would be nothing shown thereon insofar as elevations, depressions and contours of the land are concerned to contradict it. On the other hand, if Captain Marshall's testimony that there was a detailed topographical survey in 1894 be correct, then the testimony of Captain West is entirely worthless because of the fact that he has utterly disregarded those things which are most important in giving weight and worth to the testimony of an expert witness whose testimony is based entirely upon maps.

To show that Captain West was in error and that counsel for defendant have blindly followed him in it, it is here considered only necessary to refer the court to an examination of complainant's Exhibits 4-A-B-C, which are blue prints of the original field survey or work sheets of the Mississippi River Commission Survey of 1894, certified to by the Secretary or War as being true and correct.

Captain West's testimony shows that field notes and work sheets of the 1894 Survey were on file in the office of

the secretary of the Mississippi River Commission in St. Louis, R. p. 157 and 158, and Captain Marshall's testimony shows that Exhibits 4-A-B-C to his testimony are blue prints of the original field sheets of the 1894 Survey. R. p. 171. The field sheets themselves, as indicated by sheet number 5½, show the following character of detail:

"Mississippi River Commission,

Office of Secretary.

Low water survey of Mississippi River.

Arkansas River to Vicksburg.

Shore lines, bars and hydrography as shown by survey made from October 20 to December 15, 1894.

W. G. Comber, Chief of party.

E. L. Armand, O. N. Axtell, Topographers, Book No. 2903, Book No. 2906-2909.

T. C. Hockridge, E. D. Jones, Hydrographers, Book No. 2889.

C. A. Bonfils, Leveler. (Book No. 2899.)

Gustav Bichoff, Draftsman.

Field Sheet No. 5½—Vicinity of Duvall's, L. D. G. Landing.

Scale, 1:10,000."

If these notations on the field sheets were not of themselves sufficient to show that the character of detail covered by the map was not only shore lines, but the topography of

the land the hydrography of the river, certainly it is necessary to do no more than to examine the field sheets themselevs to show that all of these details are covered by the work. The three sheets show the channel of the river around to the east and north of the location of upper and lower Tullos Island in 1894. Soundings in the river are shown, to the south and west of the river is shown the land, and its topography is indicated by contour lines, elevations and notations as to the character of the soil, such as mud and sand, and the character of timber of growth shown thereon, such as grass, weeds, willows and cottonwoods. With these exhibits in evidence it certainly would be treating the survey of the Commission with scant regard to say that these field sheets do not show a detailed topographical history of the territory in question.

We think that it is proven beyond question that the 1894 Survey shows the same character of detail and gives the same data that the 1882 Survey gives, and that both Captain West, witness for, and counsel for the complainant, who blindly followed his testimony, are mistaken when they say that there was no Survey in 1894 of the same character as the Survey of 1882. If this be true, then it is evident that the testimnoy of Captain West is entitled to little or no weight because he utterly disregarded the essential factors which should have controlled his opinion.

Defendant's witnesses, William Miller, R. p. 304, Lawrence Townes, R. p. 220 and 231, and R. E. Foster, R. p. 209, show that neither upper nor lower Tullos Island completely washed away.

The testimony is undisputed that in the year 1893 both islands were in existence and that there were trees growing on them. (Testimony of Purnell, R. p. 264, 282, De La Hunt, R. p. 292, Miller, R. p. 304, Townes, R. p. 221 and 222, Foster, R. pp. 209 and 210, Marshall, R. p. 175.)

The testimony of the complainant's witness, E. T. Purnell, shows that the channel of the river changed around Hopkins Island (upper Tullos Island as shown by his testimony, R. p. 277), and the testimony of the complainant's witness, De La Hunt, shows that the channel of the river had come to the north and east of this island; and that the channel was in that location, and the island (upper Tullos Island) was there in 1908. R. pp. 292 and 298. All of the witnesses who were familiar with the physical facts existing on the territory in dispute after the year 1894 are agreed that there was a depression between Willow Point and what was variously designated by them as Island 98, or Newman's Towhead, and the testimony of Captain Marshall that this depression was in the same location as the river channel in 1882 is undisputed.

The testimony of defendant's witness, Albrittain, shows that in 1924 he went upon the Towhead (islands) with a surveyor and found high ground in the same location as that of the islands in 1882. The soil on this high ground was of the same character as the soil on the mainland and large cottonwood trees, the largest on the towhead, grew there. This high ground extended to the river on the west, and was bounded on the east by a steep bank, shown to be in the location of the west bank of the 1823 island chute.

To the east of this high ground was made land with soil of a different kind and covered with a different growth—willows. R. pp. 243, 244, 252.

Complainant's witness, W. H. Reed, corroborates this testimony, showing that he was familiar with the high bank, the varying character of soil deposits, and growth thereon at this particular point. R. pp. 124, 125.

N. B.: This testimony shows that the island could not have washed away. On the contrary, it is evidence of the fact that the channel of the river had gone around this high ground (islands) making a new channel to the east and from there gradually moved eastward by erosion of the main Mississippi shore, the islands being gradually added to and enlarged by accretion.

The testimony of Captain Marshall, giving his interpretation of the history of the change in the river from 1882 to 1894 based on the 1894 field and work sheets and the map of the Mississippi River Levee District, showing changes in the channel of the river from 1882 to 1896, should be considered with special reference to the above testimony because of the fact that his interpretation of the maps is borne out practically in every detail by the testimony of these witnesses. It should also be borne in mind, in examining the testimony of this witness that his opinions are not unsupported by facts, but each statement by him is based on data obtained from the charts to which he referred, or is based on personal knowledge of the situation. As has been stated before, a most important thing to be kept in mind in considering the testimony of this witness

is, that there is no dispute of the fact that both upper and lower Tullos Island were in existence as late as 1893.

Captain Marshall, using as a basis for his testimony Exhibits 4-A-B and C, first shows that at the time the Survey was made in 1894 there was high ground in the same location as Tullos Island in 1882 and of a slightly higher elevation than were the Islands at that time (1882). To the west of the location of this high ground there is shown low ground, this low ground being 20 feet lower than the high ground, and some 25 feet above the water level. R. p. 172-173. The witness next shows by superimposing over the 1882 Survey a tracing of the 1894 Survey that the high ground referred to was in the identical location as the Islands in 1882, and that the low ground was in the identical location of the river in 1882. R. p. 178. He next shows that there was timber, cottonwoods and willows, growing on this high ground. R. p. 173-174. The witness next, by comparison of Chart 45 of the 1882 Survey and Chart 47 of the 1913 Survey, shows that the river in 1913 had returned to the same location as occupied by it in 1882.

It will, therefore, be seen that this witness has shown the following facts:

1. That in 1894 there was high ground practically of the same elevation and in the same location as the Islands in 1882.

2. That the channel of the river was to the east of this high ground, and over the location of the old 1823 Island chute.

3. That to the west of this high ground there was low ground in the identical location of the channel of the river in 1882.

4. That there were cottonwoods and willow trees growing on this high ground at the time of the Survey in 1894.

5. That the channel of the river in 1913 was in the same location as in 1882.

These facts are not and cannot be disputed because they are shown positively by the official maps and charts introduced as exhibits in the case. With these facts as a basis the witness then gives it as his expert opinion that the channel of the river changed so as to cut around to the north and east of upper and lower Tullos Island and made a new channel there by widening and straddling the old 1823 Island chute. With these facts established it would not take an expert to reach the conclusion given by Captain Marshall, the facts themselves being so plain and convincing that the humblest citizen could reach no conclusion other than that given by the witness. It will be recalled that the testimony is undisputed that the islands were in existence in 1893, and yet one year later by the Survey of 1894—it is shown that there were then cottonwood and willow trees growing on the high ground. (The Islands.) It is inconceivable that if the island had completely washed away, as contended by complainant, the towhead could have built back in that one year and have had growing upon it cottonwood and willow timber. The analysis of the undisputed facts reduces the contention of complainant to an absurdity.

Captain Marshall further substantiates his testimony in this regard by explaining the facts shown by the Mississippi River Levee District map of Albemarle Bend which was prepared by Captain C. H. West in 1908, but introduced as an exhibit to the defendant's testimony. The progressive building of the levees as disclosed by this map shows how the caving by the river, which was confined to the lower part of lower Tullos Island in 1882 had, by 1888, shifted above and behind or to the north and east of Tullos Island, and from there gradually widened out the chute to the east of Tullos Island. R. pp. 180-181.

The inescapable and incontrovertible fact is that the engineers of the Mississippi River Commission in 1894 found the islands in their old position with timber growing thereon and delineated them on their field or work sheets, and on the same survey and work or field sheets showed the river had passed around them to the north and east.

The fact is also inescapable that all of the maps or charts introduced in evidence save only the blue prints made by Captain West and offered as Exhibits to his testimony show the islands. As was well explained by Captain Marshall:

> "Q. Does any other map or drawing which you have seen, except this map, or No. 3 of C. H. West, lose sight of the island?
>
> A. No, I have not seen any of the maps except the Mississippi River Commission maps which have been under discussion, the 1 to 10,000, 4-A-B- and C, the one inch to the mile, 17, Exhibit 3, those are the only maps that I know of, except the one

issued with the superimposed lines on Sheet 17 showing the 1894 line, from which, I presume, Captain West prepared his Exhibit I. None of those shown was accretion, and none of them have the island left off."

In this connection the fact must not be lost sight of that during this entire period of time the territory comprising the islands was assessed for taxation by Issaquena County in accordance with the laws of the State of Mississippi (as will be more fully discussed under the next subdivision of this brief) by the owners thereof giving in the same under oath to the assessor with the value thereof fixed by them; that the acreage, valuation, and ownership of these lands varied during the years; that taxes thereon were paid to the State of Mississippi, or in default thereof the lands were sold by the State. These facts show not only that the State of Mississippi exercised acts of sovereignty, dominion and control over the territory but also that it was actually in existence during this period of time.

It is, therefore, respectfully insisted that the testimony of the witnesses and the proof furnished by the maps and other exhibits in this cause show conclusively that Tullos Island did not wash away, but that the channel of the river changed about it, so as to cut around to its north and east side, leaving the old river bed to fill up and connect the island with the Louisiana shore.

EXCEPTION B TO MASTER'S REPORT

Exception "B" is as follows: That the accretions which attached to the Louisiana shore up to the avulsion of

1912-13 and thereafter, so long as the current continued to flow in the channel as it existed prior to said avulsion became Louisiana territory." As this exception must stand or fall with exception "A," it becomes unnecessary to discuss the evidence in connection therewith.

Exception "C" is: "That Mississippi did not by possession or the exercise of sovereignty over the disputed territory acquire any right or title thereto."

The soundness of this exception depends upon the evidentiary value of defendant's exhibit "A"-"N" inclusive and "V-2" which is a map of East Carroll Parish, Louisiana, prepared under authority of the governing body of that parish.

EVIDENTIARY VALUE OF EXHIBITS.

Counsel for complainant do not undertake nor attempt to show that the State of Mississippi was not, during this period of time, exercising acts of dominion and sovereignty over this territory, by assessing it for taxation, selling it for the non-payment of taxes, etc., but are constrained to treat these facts lightly and as being of little value. In speaking of these assessments counsel in their brief at page 98 say:

> "The assessors in making these assessments do not survey the land, but merely go to the deed records and year after year assess the same property over again many times, long after the property has washed away.
>
> Such assessments prove only rem ipsam, that is, that they made such assessment."

This statement by counsel in their brief is unwarranted, and is unsupported, either by law or by the facts in the case.

Sections 489, 490, 491, 492 and 495, Mississippi Code of 1880, provided the method for the assessment of lands in the State of Mississippi during this period of time. These sections provided that: "Lands shall be assessed once in every four years according to the intrinsic value to be judged of by the owner or person having possession or charge thereof on oath, etc."

Sections 490, 491, 492 and 495 provide how the land rolls are made up and how the lands are described thereon and assessed. These sections show that the duty is strictly imposed upon the assessor to see that all the land in his county appears on the assessment roll, and that such lands are properly assessed for taxation.

Section 505 imposes the duty on the board of supervisors of examining the assessment roll for the purpose of ascertaining that it embraces all of the land in the county and correctly represents its ownership.

Section 507 provides:

> "In case of the destruction or deterioration in value of any real estate by any casualty, etc. * * * * the board of supervisors shall have power * * * * to change the assessment so as to reduce or increase it to the true value of the property, etc."

N. B.: For full text of these Code sections see appendix.

So it is seen that instead of the assessment being made in the haphazard manner suggested by counsel in their brief, the roll is very carefully made up by the owner of the property giving the same, under oath, to the assessor. The duty is also imposed on the board of supervisors to carefully examine the roll to see that the same embraces all the property in the county subject to taxation, and the power is given to them, in case it is shown that any property on the rolls has been destroyed, to strike the same therefrom, or to rēduce its value in accordance with the true facts.

There being no proof that the provisions of the law in this regard were not followed, it must be presumed that the officers of Issaquena County in the performance of their official duties performed them in the manner required by the law.

With reference to the map of East Carroll Parish, introduced by the defendant, counsel say the following in their original brief at page 99:

> "The map of East Carroll Parish, introduced by defendant, prepared by a Mr. Montgomery, not made from any survey at the time of its execution, but evidently made from the land survey of the United States Government of 1824, cannot show what accretions or erosions occurred since then, and is without any value as evidence when it is direct contradiction of the charts of the Mississippi River Commission, made from actual sur-

veys, at the time, and oral testimony of eye-witnesses."

It is evident from this statement that counsel have entirely misconceived the object and the purpose for which defendant introduced this map. The purpose of introducing it was not to show that the surveys of the Mississippi River Commission in 1882 and 1894 were incorrect, but only for the purpose of showing what territory East Carroll Parish, Louisiana, claimed as its own and over which it was exercising acts of sovereignty, dominion and control.

This map as certified and authenticated pursuant to the agreement entered into by counsel, as disclosed by the record at page 319, shows it to have been made by direction of the board of police of East Carroll Parish. The record, therefore, shows that not only did East Carroll Parish fail to exercise acts of sovereignty, dominion or control over the territory here in dispute, by failing to assess the same for taxation, but by the adoption of this map as the official map of the parish, has recognized that it has no right to such lands.

The defendant takes the position that these facts should have great weight with the Court in determining the merits of this controversy.

The rule is well settled that where the question is one of boundary between two states of the Union, long acquiescence in the location of a particular boundary and the exercise of dominion and sovereignty over the territory within it is conclusive as between the states.

Rhode Island vs. Massachusetts, 4 Howard 591, 11 L. Ed. 1116,

Missouri vs. Kentucky, 11 Wallace, 395, 20 L. Ed. 1116,

Indiana vs. Kentucky, 136 U. S. 479, 34 L. Ed. 329, 10 Sup. St. Rep. 1051,

Virgina vs. Tennessee, 148 U. S. 503, 37 L. Ed. 537, 13 Sup. Ct. Rep. 728,

Maryland vs. West Virginia, 217 U. S. 1, 54 L. Ed. 645,

Arkansas vs. Tennessee, 246 U. S. 158, 62 L. Ed. 638,

Michigan vs. Wisconsin, 270 U. S. 295, 70 L. Ed. 595,

Oklahoma vs. Texas, 260 U. S. 606, 67 L. Ed. 428,

Oklahoma vs. Texas, 272 U. S. 19, 71 L. Ed. 145,

Franzeni vs. Layland, 120 Wisconsin 72, 97 N. W. 499.

In the case of *Indiana vs. Kentucky*, supra, the court said:

> "This long acquiescence in the exercise by Kentucky of dominion and jurisdiction over the island is more potential than the recollections of all the witnesses produced on either side. Such acquiescence in the assertion of authority by the State of Kentucky, such omission to take any steps to assert her present claim by the State of Indiana, can only be regarded as a recognition of the right of Kentucky too plain to be overcome, except by the clearest and most unquestioned proof. It is a principle of public law universally recognized, that long acquiescence in the posses-

sion of territory and in the exercise of dominion and sovereignty over it, is conclusive of the nation's title and right."

In the case of *Virginia vs. Tennessee*, supra, the court said:

> "As said by this court in the recent case of *Indiana vs. Kentucky*, 136 U. S. 479, 516 (34: 329, 335), it is a principle of public law, universally recognized, that long acquiescence in the possession of territory, and in the exercise of dominion and sovereignty over it, is conclusive of the nation's title and rightful authority. In the case of *Rhode Island vs. Massachusetts*, 45 U. S. 4, How. 591, 539 (12: 1116, 1139) this court, speaking of the long possession of Massachusetts, and the delays in alleging any mistake in the actions of the commissioners of the colonies, said: 'Surely this, connected with the lapse of time, must remove all doubts as to the right of the respondent under the agreements of 1711 and 1718. No human transactions are unaffected by time. Its influence is seen on all things subject to change. And this is peculiarly the case in regard to matters which rest in memory, and which consequently fade with the lapse of time and fall with the lives of individuals. For the security of rights, whether of states or individuals, long possession under a claim of title is protected. And there is no controversy in which this great principle may be invoked with greater justice and propriety than in the case of disputed boundary."

In the case of *Louisiana vs. Mississippi*, 202 U. S. 1, 50 L. Ed. p. 932 and 934, the court said:

"The record contains much evidence of the exercise by Louisiana of jurisdiction over the territory in dispute, and of the general recognition of it by Mississippi as belonging to Louisiana. Apparently Louisiana had exercised complete dominion over it from 1812 with the acquiescence of Mississippi, unless the fact that the latter made a general reference to islands within 6 leagues of her shore in her Code of 1880 indicated otherwise. But the evidence fails to satisfy us that she attempted any physical possession or control until after 1900. The few instances referred to as showing that Mississippi asserted rights in the disputed area are of little weight and require no discussion."

In the case of *Maryland vs. West Virginia*, supra, the court said:

"It is true that there has been more or less contention as to the true boundary line between these states. Attempts have been made to settle and adjust the same, some of which we have referred to, and the details of which may be found in the very interesting document to which we have already made reference, the report of the committee of the Maryland Historical Society."

* * * * * *

"Independently of any effect due to the compact as such, a boundary line between states or provinces, as between private persons, which has been run out, located, and marked upon the earth, and afterwards recognized and acquiesced in by the parties for a long course of years, is conclusive, even if it be ascertained that it varies somewhat from the courses given in the original

grant; and the line so established takes effect, not as an alienation of territory, but as a definition of the true and ancient boundary."

In the case of *Franzeni vs. Layland*, 120 Wisconsin, 72, the court said:

"The undisputed evidence that for over fifty years, for all governmental and other purposes, the territory between Coon Slough and the Mississippi River proper has been considered by this state, the general government, and the State of Minnesota as well, as east of the boundary line between the two states, would be conclusive evidence, at least in a suit between private parties, of its proper location. Acquiescence for a long period of time is evidentiary of the right involved between sovereignties as well as between individuals."

In the case of *Oklahoma vs. Texas*, 260 U. S. 606, 67 L. Ed. 428, the court said:

"Texas has been exercising jurisdiction over the area and asserting proprietorship of the soil for more than half a century, and has surveyed and disposed of it all, the earliest disposals being in 1856. Some of the later surveys seem to conflict with those first made, but all name the river bank as a boundary. In those of 1856, and possibly others, it was the controlling call. See *Schnackenberg vs. State*, Tex. Civ. App. 229 P. 934; *Cordell Petroleum Co. vs. Michna*, 276 Fed. 483. The jurisdiction and title of Texas stood unchallenged until shortly before this suit. Our conclusion is that the claim that the river, or any part of it, ran south of this area in 1821, is not sus-

tained. So the boundary follows the cut bank around the northerly limit of the area."

The defendant does not in this case take the position that these acts of dominion and sovereignty, exercised over the territory in question, by assessing the same for taxation, selling it for non-payment of taxes, and dealing with it as its own, is alone sufficient to establish its title to the lands in controversy, even though such acts of sovereignty are coupled with acquiescence therein by the State of Louisiana. The State of Mississippi, however, does take the position that these acts of dominion and sovereignty should be given great weight and are strong evidence of the rights of the parties with reference thereto.

EXCEPTION "D" is: "That at the time o fthe filing of the report of the Special Master the true boundary line between the States of Louisiana and Mississippi is the middle of the navigable channel of the Mississippi River, as said channel was located at the time when the current ceased to flow therein because of the new channel produced by the avulsion of 1912-1913."

The soundness of this exception must be determined by the soundness or unsoundness of the preceding exceptions, and therefore we do not discuss it.

IV.

CONCLUSION.

The State of Mississippi, therefore, respectfully contends that the State of Louisiana has failed, first, to prove that the change of the Mississippi River from its 1823 to

its 1882 channel was the result of accretion. If this be true, then the case of the State of Louisiana must fail, not only as to the territory now embraced in what is known as Newman's Tow Head, but also as to that territory now on the Louisiana mainland and lying between the present channel of the river and the thread of the stream of the river in 1823.

But if the court takes the position that the State of Louisiana has shown this change to be by accretion, the defendant State of Mississippi still contends that the complainant has not shown the change in the river from its 1882 to its 1894 channel to be a result of erosion of and washing away of Tullos Island and the extension of the Louisiana shore line by accretion; but that the proof establishes the fact that such change was occasioned by the river eating into the Mississippi mainland, north and east of Tullos Islands and thereby passing around them, and upon filling of the old channel leaving the former island intact but connected to the Louisiana shore. If the State of Louisiana has failed to establish this fact, then what is now shown on the maps and designated as Newman's Tow Head should be adjudged by decree of this court to be Mississippi territory and the boundary between the States of Louisiana and Mississippi at the point in question fixed as the middle of the channel of the Mississippi River as it flowed in the year 1882.

Respectfully submitted,

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Attorney General of Mississippi

PAT HENRY,
RUFUS CREEKMORE,
ELMER C. SHARP,
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RUSH H. KNOX,
Solicitors for State of Mississippi.

APPENDIX.

MISSISSIPPI CODE OF 1880

Assessment of Lands

Sec. 489: Lands shall be assessed once in every four years, according to intrinsic value, to be judged of by the owner or person having posession or charge thereof, on oath, taking into consideration the improvement, also the proximity to navigation, or to any town, city, village, or road, and any other circumstance that may tend to enhance the value, and not at what it might bring at a forced sale, but what the owner would be willing to accept and expect to get for it, if he was disposed to sell it; and if any person shall deliver or disclose to any assessor or deputy assessor, any list, statement or return, in regard to his land, which, in the opinion of the assessor or deputy assessor, is false or fraudulent, or contains any understatement or under-valuation, it shall be lawful for the assessor or deputy assessor to make an assessment of said land, at a valuation equal to the highest rate per acre, for any lands adjoining said land so under-valued, which may have been returned under oath. Land not given in by any person, shall be valued in the same manner by the assessor; and should there be a difference in the value of different parcels of a tract, the

several parcels of such different values shall be separately asssed; *provided*, that the first assessment, under this law, shall be made in the year 1883, and until that shall have been made, the assessment in the year 1879, shall continue in force, and be the basis of taxation and collection.

How Land Roll Made Up.

Sec. 490: Each assessor shall keep the land assessment roll separately, and he shall commence the same in the lowest number of range and township in his county, and in the northeast corner of each township, and shall proceed, numerically, with all the sections, townships, and ranges in his county, first setting down all the subdivisions of each section, as they belong to different individuals, or the whole section together, if owned by one person and not divided on account of parcels being of different value; and if more than one person shall claim to be the owner of the same tract or parcel of land, the assessor shall so state in his assessment roll, and shall only be entitled to the value of one assessment, and the tax collector shall only collect the taxes on one assessment; land of the United States, or land exempt from taxation, shall be set down in separate columns, without the value. Lands not surveyed according to the plan of the government surveys, shall be set down by the designation used on the government maps, or by other means, by which they may be distinguished; and if parts of such lands shall be owned by different persons, such part shall be referred to by quantity, and such short memorandum as may be convenient to show the locality. In assessing land situated in any city or town, the assessor shall proceed according to

the plat or plan thereof, commencing with the lowest number of square and lot, or other subdivision, and proceeding numerically, with all the lots in a square, and all the squares in square and lot, or other subdivision, and proceeding numerthe city or town, until completed; but no failure to observe any of the requirements shall be held to vitiate any assessment, if the land be so described as to be identified; and it shall be a sufficient identification of land to describe it as "the land of ..... (the person owning or claiming it), occupied by....," or that part of (section or other known division, designating it) owned or claimed by .....;" or "the lot on which resides" or "the lot occupied by..... .....;" or "by the name of which it may be known, or by any description, which will furnish a sure guide for the ascertainment by parcel evidence of the particular land intended.

DESCRIPTION OF LAND.

Sec. 491: In assessing land, a description of it as a part of a designated tract or division, shall be held to embrace such part as is the subject of separate ownership as one tract or division whether owned by one or several jointly; and when part of a designated tract or division shall be sold for taxes; the sale shall pass the title of such part as was the subject of such separate ownership when it was assessed; and the sale of a specified number of acres of a tract containing more or a specified portion of a tract shall pass an undivided interest in the whole tract equal to the proportion which the number of acres or portion sold, bears to the whole tract; and when part of a known tract or divi-

sion of land is assessed by a description which identifies it, any other part of it which is assessed, but not so identified, shall be held to embrace all of such tract or division not included in the part identified; and parol testimony shall always be admissible to apply a description of land on the assessment roll, or in a conveyance for taxes, where such testimony will show what land was assessed and sold, and there is enough in the description on the roll or conveyance to be applied to a particular tract of land by the aid of such testimony.

WHAT CARRIED FORWARD TO LAST PAGE.

Sec. 495: To facilitate the assessment and collection of taxes, the board of supervisors of each county shall procure, if not already done, and keep a land book, or book of maps of all the townships and fractional townships in the county, which book shall be well bound, and shall be deposited in the office of the clerk of the board of supervisors; and shall procure lists of lands in their counties owned by the United States, and no allowance shall be made to the assessor, who does not show upon his assessment roll an assessment of every acre of land in his county, as shown by the map or townships in his county, if there be such; and it shall be the duty of the board of supervisors to carefully compare the assessment roll with the said maps, with a view to the enforcement of this provision.

ROLL TO EMBRACE AND CORRECTLY DESCRIBE ALL LANDS.

Sec. 505: It shall be the duty of the board of supervisors to carefully examine the assessment roll of lands before

approving it, to see that it embraces all of the land in the county, and correctly represents it as being the property of individuals, or the State, or United States, and taxable or not taxable, according to law, and that all land correctly described according to law, so as to be identified with certainty; and all land improperly omitted from such roll shall be added thereto by such board or under its direction, and land incorrectly or insufficienetly described shall be caused by such board to be properly described on said roll before it shall be approved; and the assessor shall at once make all corrections in the said assessment roll, which said board may direct, but the board may cause such corrections to be made by the clerk of such board.

CHANGE IN ASSESSMENT IN CERTAIN CASES.

Sec.507: In case of the destruction or deterioration in value of any real estate, by any casualty, or in case of clerical error in the assessment rolls, or in case of over-assessment, known to be such, or in case of a change of ownership, after assessment, or in case of an increase of value by the erection of improvements, the board of supervisors shall have power, at any time, on the application of a party interested, or otherwise, to change the assessment so as to reduce or increase it to the true value of the property, or to cause the taxes to be charged to the purchaser thereof; and in case of the reduction or increase of any assessment, the same shall be certified by the clerk of the board of supervisors to the auditor.

I hereby certify that I have this day mailed to Percy Saint, Attorney General of the State of Louisiana, New Orleans, Louisiana, postage prepaid, a true copy of this Brief; and have also mailed to John Dale, Vidalia, Louisiana and Brandon & Brandon, Natchez, Mississippi, Solicitors for the State of Louisiana, a true copy of this Brief.

This the 13th day of December, 1930.

GEORGE T. MITCHELL,
Attorney General.

By E. C. Thompson
Associate Counsel.

FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1932

No. 6, Original

THE STATE OF LOUISIANA, COMPLAINANT,

vs.

THE STATE OF MISSISSIPPI, DEFENDANT.

Statement of the work done, the time employed, and the expenses incurred by the Commissioner in the running, locating, platting, and marking the boundary between the State of Louisiana and the State of Mississippi between latitude 32° 39′ on the north and the division line between Issaquena and Warren Counties, Mississippi (as extended westward), on the south.

SAMUEL S. GANNETT,
Commissioner.

WASHINGTON, D. C., *June 19, 1933.*

Supreme Court of the United States

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WASHINGTON, D. C., *June 19, 1933.*

To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Complying with the instructions given in sec. 5 of the decree of April 13, 1931 (283 U. S. 793), your Commissioner begs to submit the following statement of the work done, the time employed, and the expenses incurred in running, locating, platting and marking upon the ground the boundary between the State of Louisiana and the State of Mississippi between latitude 32° 39′ on the north and the division line between Issaquena and Warren Counties, Mississippi (as extended westward), on the south.

Expenses of Louisiana-Mississippi Boundary Line Commission During October, 1932.

Traveling expenses of Samuel S. Gannett, Commissioner, from Washington, D. C., to Vicksburg, Miss., Oct. 3, 4, 5	$59.97
Hotel expenses of Samuel S. Gannett at Vicksburg, Oct. 5 to 31, inclusive, including lodging, office rent, meals, local and long distance telephone calls, etc., 27 days at $4.25	114.75
Expressage on surveying instruments from Washington, D. C., to Vicksburg, Miss	9.26
For cash paid for traveling and miscellaneous expenses of E. L. McNair, Chief of Field Party, as follows: Washington, D. C., to Vicksburg, Miss. (including round trip ticket Washington-Vicksburg), October 10, 11, 12	85.05
E. L. McNair, lodging and subsistence, Vicksburg, Miss., October 12-31, 20 days at $3.40	68.00
Cash paid by Samuel S. Gannett, Commissioner, to members of Field Party, as follows:	
E. L. McNair, Chief of Party, Oct. 10-31, 22 days at $15.00	330.00
Leland Abel, use of truck, October 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 31, 13 days at $10.00	130.00
Gorman Schaffer, Chainman and use of auto part of time, October 6, 7, 12, 13, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 31	70.50
Charles A. Smith, Rodman, October 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 31, 13 days at $3.00	39.00
E. H. Riles, Chainman, October 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 12 days at $3.00	36.00
Edwin B. Knox, Chainman, October 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 31, 13 days at $3.00	39.00
For cash paid for miscellaneous field expenses as follows: Schoellhorn-Albrecht Machine Co., St. Louis, Mo., 24 bronze state line and reference point tablets at $2.75	66.00
Express on same	2.65

O'Neil-McNamara Hardware Co., Vicksburg, Miss., axes, brush hooks, saws, etc	19.20
Miss. Lumber Co., Vicksburg, Miss., cement, sand, gravel for monuments	34.05
Vicksburg Boiler and Iron Works: Reinforcing rods	2.00
Adams; Drafting maps	7.50
October 18, 19, 20, Ferry of truck, Yazoo River	3.00
Oct. 20, Enterprise Plumbing and Metal Works: 7 metal forms for monuments	6.45
1 mixing box	4.50
Cash Paid: J. H. Cage, October 28, Hauling	3.00
Sam Crockett, labor, Oct. 27, 28, 29	3.00
Nathan Brown, labor, Oct. 27, 28, 29	3.00
Florence Cage, subsistence of 5 men of party, Oct. 27, 28	8.75
Total expenses for October	$1,144.63
½ payable by Louisiana	572.32
½ payable by Mississippi	572.32

Expenses of Louisiana-Mississippi Boundary Line Commission During November, 1932.

Leland Abel, for services and use of truck, Nov. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 11 days at $10.00	$110.00
Gorman Schaffer, chainman, Nov. 1, 2, 3, 4, 5, 5 days at $3.50	17.50
Gorman Schaffer, services of self with auto, Nov. 17, 1 day	8.50
Chas. A. Smith, rodman, Nov. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 10 days at $3.00	30.00
E. H. Riles, chainman, Nov. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 10 days at $3.00	30.00
Edwin B. Knox, chainman, Nov. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 10 days at $3.00	30.00

Nov. 2, Sam Crockett, laborer	2.00
Nov. 3 & 4, Nathan Brown, laborer, 2 days at $2.00	4.00
J. H. Cage, for hire of team, Nov. 1, 2, 3, 4, 4 days at $2.50	10.00
J. H. Cage, for services of self and team, Nov. 8	3.00
Nov. 3, Vicksburg Boiler Works, steel reinforcing rods	1.00
Mrs. Florence Cage, for subsistence of survey party, Nov. 1, 2, 3, 4, 5, 8, 6 days and nights	42.00
Nov. 7 to 12, James L. Adams, drafting map of boundary line	60.00
Nov. 1 to 12, Mississippi Lumber Co., for sand, gravel and cement	5.60
Nov. 12, Enterprise Plumbing and Metal Works, 2 forms	1.90
Nov. 9, 10, 11, Ferry charges on truck across Yazoo River	3.00
Nov. 22, Photostat of map	3.00
Nov. 1-23, Postage stamps $1.00, Rubber stamps $1.00	2.00
Services of stenographer and typist	4.00
Hotel expenses of Samuel S. Gannett at Vicksburg, Miss. (Nov. 1 to Nov. 15, inclusive, including lodging, office rent, meals, local and long distance telephone calls, telegrams, etc.), 15 days at $4.50 per day	67.50
Nov. 15, Expressage on surveying instruments, Vicksburg to Washington, D. C	9.81
Traveling expenses, Samuel S. Gannett, from Vicksburg, Miss., to Washington, D. C	57.50
Hotel expenses, E. L. McNair at Vicksburg, Nov. 1-17, inclusive, 17 days at $3.50	59.50
Traveling expenses, E. L. McNair from Vicksburg, Miss., to Washington, D. C. (R. R. fare not included)	13.90

E. L. McNair, pay Nov. 1 to 22, incl., 22 days at $15.00	330.00
Total expenses for November	$905.71
½ payable by Louisiana	$452.85
½ payable by Mississippi	452.85

Expenses of Louisiana-Mississippi Boundary Line Commission During March, 1933.

E. L. McNair, chief of party and expert computer, March 9 to 31, inclusive, 23 days at $15.00	$345.00
Mch. 9, U. S. Geological Survey, Drafting	3.61
Mch. 9, Postage stamps $1.00, Stationery $1.00	2.00
Mch. 9-31, Stenographer and typist	4.00
Mch. 29, Photostats of Maps	3.50
Total expenses for Mch., 1933	$358.11
½ payable by Louisiana	179.06
½ payable by Mississippi	179.06

Expenses of Louisiana-Mississippi Boundary Line Commission During April, May, and June, 1933.

U. S. Geological Survey, additional map work	$49.00
U. S. Geological Survey, photolithographing and printing 50 copies of map and diagrams of bronze tablets	207.66
Judd & Detweiler Inc., Washington, D. C., printing report of the Commissioner	93.00
Judd & Detweiler Inc., printing financial report of the Commissioner	26.00
A. Zichtl, Washington, D. C., binding three copies of the Report of the Commissioner, at $1.50 each	4.50

Stenographer and typewriters $30, Postage stamps $1.00	31.00
Total expenses for April, May, and June, 1933	$411.16
½ payable by Louisiana	205.58
½ payable by Mississippi	205.58
	$411.16

Total cash advanced by the Commissioner in payment of all field and office expenses incurred in running, locating, platting, and marking the Boundary Line between the State of Louisiana and the State of Mississippi between latitude 32° 39′ on the north and the division line between Issaquena and Warren Counties, Mississippi (as extended westward) on the south, is $2,819.62. Of this amount of $2,819.62, the State of Louisiana through the Chief State Engineer, New Orleans, has refunded to the Commissioner $1,409.81 and the State of Mississippi through the Attorney General, Jackson, Mississippi, has refunded to the Commissioner $1,409.81, subject to approval by the Court.

Personal Services of Samuel S. Gannett, Commissioner.

From Sept. 26 to Oct. 2, inclusive, 1932 ..... 7 days

Studying the several hundred pages of the printed record and various maps and exhibits of plaintiff and defendant, planning details of field work for the Boundary Commission.

From Oct. 3 to November 15, inclusive, 1932 ..... 44 days

Supervising field work of running, locating and marking the disputed Louisiana-Mississippi Boundary Line.

From November 16 to 19, inclusive, 1932	4 days	
March 7 to 31, inclusive, 1933	25 days	
April 1, 3, 5, 7, 8, 10, 12, 13, 14, 17, 19, 20, 21, 25, 29, 1933	15 days	
May 1, 4, 11, 16, 17, 29, 31, 1933	7 days	
June 2, 8	2 days	53 days
Making and directing final computations of field notes, supervising preparation of map and diagrams, arranging data, writing report of Louisiana-Mississippi Boundary Line Commission and compiling this financial statement.		
Total		104 days

Recapitulation.

Total cost of boundary work, described in report dated May 17, 1933, including cost of engraving the map, printing report of Commissioner, also compiling and printing this financial statement dated June 19, 1933, but not including compensation of the Commissioner, $2,819.62.

To the above amount must be added whatever is allowed the Commissioner as compensation for his services.

Respectfully submitted,

SAMUEL S. GANNETT,

Commissioner.

WASHINGTON, D. C., *June 19, 1933.*

IN THE

Supreme Court of the United States

OCTOBER TERM 1930.

NUMBER 8 ORIGINAL.
IN EQUITY.

THE STATE OF LOUISIANA, *Complainant,*

vs.

THE STATE OF MISSISSIPPI, *Defendant.*

PROPOSED FORM OF DECREE

This cause coming on for hearing by this Court upon the Report of Thomas G. Haight, Special Master appointed by this Court, and herein filed, and upon the Exceptions filed herein by the State of Mississippi, Defendant, to said Report of the Special Master, including the Findings of Fact, Conclusions of Law, and Recommendations for a Decree, and also upon all pleadings and exhibits thereto heretofore filed by both Complainant and Defendant, and also

upon all depositions of witnesses and documentary and record evidence adduced, preferred, filed, and submitted both by Complainant and Defendant and upon all Briefs of counsel both for Complainant and Defendant heretofore filed and submitted; and thereupon, on February 2nd, A. D. 1931, this Court having rendered an Opinion sustaining all the findings and recommendations of the Special Master, and directing that a Decree should be entered as recommended by the Special Master; and the Court being fully advised in the premises:

It is thereupon Considered, and now Ordered, Adjudged, and Decreed by this Court, as follows, to-wit:—

1. That the Bill of Complaint has been sustained by sufficient and legal evidence, and that Complainant, the State of Louisiana, is at law and in equity entitled to the relief prayed for;

2. That the Report of Thomas G. Haight, Special Master, be and the same is hereby approved, sustained, and confirmed by this Court, and that the Exceptions to said Report filed by the State of Mississippi, be and the same are hereby over-ruled;

3. That immediately prior to the avulsion of 1912-1913 the boundary line between the State of Louisiana and the State of Mississippi between latitude 32° 39′ on the North and the division line between Issaquena and Warren Counties, Mississippi (as extended westward), on the South, was at the place and line which was the thread of the main channel of the Mississippi River as it then ran; and that, the current having

since ceased to flow in part of said channel as it existed prior to said avulsion, because of the new channel produced thereby, at this time the true boundary line between the State of Louisiana and the State of Mississippi, in that part and so much of the above area as was affected by the avulsion (between said North and South points), is the middle of the navigable channel of the Mississippi River as said channel was located at the time when the current ceased to flow therein because of the new channel produced by the avulsion of 1912-1913.

4. That ..... and .... and ..... are hereby named and appointed as a Commission, with power, authority, and instructions to ascertain, survey, plat, and mark by suitable permanent boundary markers said boundary line, as above defined, between said States between said North and South points, and to make and file in this Court as soon as practicable a full and accurate report of their findings, survey, and plat, and that the same be submitted to this Court for confirmation; and that said line when ascertained and located in accordance with this decree and approved and confirmed by the Court, is the boundary line between the State of Louisiana and the State of Mississippi between the North and South points hereinabove mentioned.

5. That said three Commissioners be allowed each the sum of ..... Dollars per day for each day actually engaged in performing the work which they are above directed and appointed to perform, and such expenses in addition thereto as may be necessary in the performance of their duties.

6. That all costs incurred in this suit by both Complainant and Defendant to and including the date of the rendition of this Decree be and the same are hereby taxed and adjudged against the Defendant, State of Mississippi, and are ordered and decreed to be paid by the State of Mississippi; that the costs and expenses that may hereafter be incurred in the ascertaining, marking, surveying, and platting of the inter-state boundary line by the Commissioners in pursuance of this Decree be and the same are hereby ordered and decreed to be paid one-half by Complainant and one-half by Defendant.

The foregoing form of decree is respectfully submitted to the Court with the request that it be approved.

March 5, 1931.

PERCY SAINT,
Attorney General of Louisiana.
JOHN DALE,
GERARD BRANDON
ROBERT ASH,
Assistant Counsel for Louisiana.

February 28, 1931.

GEO. T. MITCHELL,
Attorney General of Mississippi.
By J. A. LAUDERDALE,
Assistant Attorney General of Mississippi.

FILE COPY

MAY 22 1
CHARLES ELMORE

Supreme Court of the United States

OCTOBER TERM, 1932

No. 6, Original

THE STATE OF LOUISIANA, COMPLAINANT,

vs.

THE STATE OF MISSISSIPPI, DEFENDANT.

REPORT OF COMMISSIONER APPOINTED TO RUN, LOCATE, PLAT, AND MARK THE BOUNDARY BETWEEN THE STATE OF LOUISIANA AND THE STATE OF MISSISSIPPI BETWEEN LATITUDE 32° 39′ ON THE NORTH AND THE DIVISION LINE BETWEEN ISSAQUENA AND WARREN COUNTIES, MISSISSIPPI (AS EXTENDED WESTWARD) ON THE SOUTH.

SAMUEL S. GANNETT,
Commissioner.

WASHINGTON, D. C., May 17, 1933.

PRESS OF JUDD & DETWEILER, INC., WASHINGTON, D. C.

Supreme Court of the United States

OCTOBER TERM, 1932

No. 6, Original

THE STATE OF LOUISIANA, COMPLAINANT,

vs.

THE STATE OF MISSISSIPPI, DEFENDANT.

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Supreme Court of the United States

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To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

I, Samuel S. Gannett, Washington, D. C., Commissioner appointed under decree of the Court rendered April 13, 1931,* to run, locate, plat, and mark the boundary between the State of Louisiana and the State of Mississippi between latitude 32° 39′ on the north and the division line between Issaquena and Warren Counties, Mississippi (as extended westward), on the south—have the honor to submit the following report with an accompanying map. The map is marked as follows:

* 283 U. S. 791.

Supreme Court of the United States

OCTOBER TERM, 1932

No. 6, Original

THE STATE OF LOUISIANA, COMPLAINANT,

vs.

THE STATE OF MISSISSIPPI, DEFENDANT.

MAP OF THE BOUNDARY LINE BETWEEN LOUISIANA AND MISSISSIPPI IN THE VALLEY OF THE MISSISSIPPI RIVER BETWEEN THE PARALLEL OF 32 DEGREES AND 39 MINUTES NORTH LATITUDE AND THE DIVISION LINE BETWEEN ISSAQUENA AND WARREN COUNTIES, MISSISSIPPI (AS EXTENDED WESTWARD), AS SURVEYED IN 1932 IN ACCORDANCE WITH THE TERMS OF THE ABOVE-ENTITLED CAUSE.

Section 3 of the decree specifies as follows:*

"That immediately prior to the avulsion of 1912-1913 the boundary line between the State of Louisiana and the State of Mississippi between latitude 32 degrees 39 minutes on the north and the division line between Issaquena and Warren Counties, Mississippi (as extended westward), on the south, was at the place and line which was the thread of the main channel of the Mississippi River as it then ran; and that, the current having since ceased to flow in part of said channel as it existed prior to said avulsion, because of the new channel produced thereby, at this time the true boundary line between the State of Louisiana and the State of Mississippi in that part and so much of the above area as was affected by the avulsion (between said North and South points) is the middle of the navigable channel of the Mississippi River as said channel was located at the time when the current ceased to flow therein because of the new channel produced by the avulsion of 1912-1913."

* 283 U. S. 792.

The most reliable and accurate record of location of the thread of the main channel of the Mississippi River for the dates in the area specified in section 3 of the decree is that given on chart No. 47 of the Missisippi River Commission Survey of 1913-1915.[1]

Method of Procedure

Field work of running, locating, and marking the boundary line was begun early in October, 1932, and completed in November, 1932. From investigations made on the ground it was found that a little more than 2.5 miles of the original channel had been filled up by silt in the 20 years since the avulsion of 1912-1913, so that it was feasible to erect several wooden and substantial concrete monuments on that part of the line. Water or soft swampy soil along the remainder of the original channel prevented marking by monuments, but angle points along this portion of the State line are defined by latitude and longitude, scaled from Chart 47 with several monuments erected on solid land adjacent to the line to which those positions could be referred and adjusted.

B. M. Noah of the Mississippi River Commission in south central part of Newman Towhead furnished the initial point from which to begin the survey. This bench mark is shown on Chart 47 and described in Volume 2 of Descriptions, elevations, and geodetic positions of Permanent Marks Survey Mississippi River, Cairo, Ill., to Gulf of Mexico, 1915. A careful transit line was run from B. M. Noah westward until it intersected the thread of the main channel of the Mississippi River as it existed at the time of the avulsion of 1912-1913 (shown on Chart 47 of Mississippi River Commission), thence northward along said thread of main channel as far as conditions of soil at the time of the survey in 1932 would permit.

Issaquena-Warren County Line

The Issaquena-Warren County line (the southern terminus of the boundary line by Sec. 3 of the decree of the

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[1] Defendant's Exhibit 6-D, Complainant's Exhibit F.

Court) was identified on the ground on the south side of section 33, T. 9 N., R. 8 W., and on north side of section 4, T. 18 N., R. 2 E., by two line trees marked with four hacks on east and west sides. One a hackberry tree more than two feet in diameter is about 215 feet east of public road and the other an oak 15 inches in diameter is 1,920 feet east of road. Other trees close to county line were marked with hacks on north or south sides. At the southeast corner of section 33 was found a stake driven in the ground and standing 2.5 feet high. Witness trees were noted as follows marked facing the stake, a blazed oak tree 24 feet distant, true bearing S. 55° 16′ W.; a hackberry tree cut with large cross, distant 18.6 feet, true bearing N. 19° 31′ E.; a hackberry tree cut with large cross, distant 12.7 feet, true bearing N. 54° 52′ E. These trees are approximately 15 inches in diameter. The wooden stake at southeast corner of section 33 was replaced by an iron angle bar 6 feet long and driven 3 feet in the ground.

Four permanent concrete marks (reference points numbered 2, 3, 4, and 5) were placed on Issaquena-Warren County line near public road and present levee and one a quarter of a mile west of levee.

Methods of Survey

The transit traverse lines were referred to the true meridian by observations on Polaris taken at the most suitable locations, and distances were measured with a steel tape 300 feet in length under a tension of 20 pounds. Angles at stations along the traverse lines were measured at least 4 times with a transit having a circle 6½ inches in diameter reading by 2 verniers to 30 seconds of arc. A reference line was measured along the levee adjacent to the boundary line with a check base at stations 17-17A near reference monument No. 1. Ties were made to P. B. M. 96/1, P. B. M. Albemarle, B. M. 97/a, and P. B. M. Bellevue, all being marks of the Mississippi River Commission. An independent check of survey work by engineers of the Louisiana-Mississippi Boundary Commission in 1932 was obtained by comparison with results of survey lines of 1931 by the Corps of Engineers, U. S. Army, Vicksburg District.

Acknowledgment is due the Mississippi Levee Board, Greenville, Miss., the Mississippi River Commission and the Corps of Engineers, U. S. Army Vicksburg District for maps and other valuable survey material furnished for use of the Louisiana-Mississippi Boundary Line Commission, also to the Department of the Interior U. S. Geological Survey for instruments used in the field and for use of room for office work in Washington, D. C. The cost of survey of the boundary line was materially reduced thereby.

The instrumental work of 1932 along the disputed Louisiana-Mississippi Boundary Line was done by E. L. McNair, geodetic engineer, chief of field party; for more than 30 years an employee of the United States Department of the Interior Geological Survey. Mr. McNair was also chief of field party in the survey and monumenting of the 100th Meridian Boundary Line between Oklahoma and Texas, as noted in report of the Commissioner for the Supreme Court of the United States, October Term 1929, No. 6, Original. Mr. McNair was also chief of field party in the survey and monumenting of the New Mexico-Texas boundary line in the Valley of the Rio Grande, as noted in report of the Commissioner for the Supreme Court of the United States, October Term 1930, No. 2, Original.

THE FIELD NOTES OF THE BOUNDARY SURVEY AND OF THE TRANSIT TRAVERSE, TOGETHER WITH TABULATIONS OF TECHNICAL DATA, FOLLOW:

Detailed Description of Boundary Line

The description of the boundary line as determined in 1932 is as follows:

Beginning at Station Zero, a large concrete monument in southwest part of Newman Towhead, in latitude 32° 36′ 48.23″ longitude 91° 02′ 56.39″ from which B. M. Noah bears S. 82° 39′ 49″ E. 7,155.71 feet and B. M. 76 M bears N. 25° 48′ 40″ W., 10,316.10 feet, and triangulation station Foster bears S. 16° 14′ 57″ W., 4,695.85 feet and B. M. 97/3 bears S. 38° 52′ 42″ W., 5,076.94 feet, and angle point No. 1 bears N. 38° 53′ 52″ E., 443.72 feet, thence from angle point No. 1 to angle point No. 2 N. 38° 53′ 52″ E., 693.40 feet, thence

from angle point No. 2 to angle point No. 3 N. 31° 15′ 30″ E., 665.11 feet, thence from angle point No. 3, marked by a concrete monument from which B. M. Noah bears S. 68° 35′ 22″ E., 6,485.53 feet, and B. M. 76 M bears N. 35° 19′ 10″ W., 9,600.74 feet, and angle point No. 4 bears N. 19° 26′ 00″ E., 950.27 feet; thence from angle point No. 4 to angle point No. 5, N. 37° 15′ 52″ E., 760. 25 feet; thence from angle point No. 5 from which B. M. Noah bears S. 53° 40′ 24″ E., 6,530.94 feet and B. M. 76 M bears N. 44° 58′ 22″ W., 8,951.39 feet, N. 30° 34′ 00″ E., 900.10 feet to angle point No. 6; thence from angle point No. 6, N. 17° 31′ 45″ E., 849.14 feet to angle point No. 7 marked by a concrete monument, thence from angle point No. 7 from which B. M. Noah bears S. 39° 49′ 40″ E., 7,101.42 feet and B. M. 76 M bears N. 56° 00′ 07″ W., 8,491.20 feet to angle point No. 8, N. 1° 18′ 00″ W., 845.30 feet, thence from angle point No. 8, N. 4° 15′ 03″ E., 950.06 feet to angle point No. 9, thence from angle point No. 9, N. 8° 56′ 40″ E., 744.25 feet to angle point No. 10, marked by a concrete monument, thence from angle point No. 10 from which B. M. Noah bears S. 28° 45′ 58″ E., 9,105.27 feet and B. M. 76 M bears N. 72° 52′ 33″ W., 7,540.45 feet, N. 27° 13′ 54″ E., 668.42 feet to angle point No. 11, thence from angle point No. 11 N. 22° 25′ 13″ E., 800.60 feet to angle point No. 12, thence from angle point No. 12 from which B. M. 76 M bears N. 83° 32′ 03″ W., 7,867.14 feet, and reference Monument No. 1 bears N. 24° 33′ 45″ E., 5,366.77 feet N. 40° 39′ 39″ E., 777.20 feet to angle point No. 13, thence from angle point No. 13 from which B. M. 76 M bears N. 87° 57′ 36″ W., 8,328.62 feet and reference Monument No. 1 bears N. 21° 53′ 41″ E., 4,625.09 feet N. 54° 14′ 38″ E., 838.66 feet to angle point No. 14, thence from angle point No. 14 N. 73° 22′ 23″ E., 795.74 feet to angle point No. 15 marked by a concrete monument, thence from angle point No. 15 from which B. M. Noah bears S. 9° 43′ 36″ E., 10,778.51 feet and reference monument No. 1 bears N. 4° 30′ 47″ E., 3,584.81 feet N. 14° 00′ 04″ E., 1,390.35 feet to angle point No. 16, thence from angle point No. 16 from which reference monument No. 1 bears N. 1° 23′ 45″ W., 2,225.36 feet N. 74° 39′ 06″ E., 836.2 feet to angle point 17-B from which reference monument No. 1

bears N. 23° 14′ 46″ W., 2,180.06 feet, thence from angle point 17-B N. 49° 10′ 55″ E., 1,250.8 feet to angle point No. 18 from which reference monument No. 1 bears N. 56° 43′ 55″ W., 2,161.15 feet, thence from angle point No. 18, S. 62° 41′ 17″ E., 953.7 feet to angle point No. 19 from which B. M. 77 M bears N. 60° 54′ 43″ E., 2,683.53 feet, thence from angle point No. 19 S. 77° 33′ 57″ E., 1,032.4 feet to angle point No. 20 from which B. M. 77 M bears N. 41° 12′ 20″ E., 2,029.51 feet thence from angle point No. 20 S. 49° 12′ 26″ E., 736.4 feet to angle point No. 21 from which B. M. 77 M bears N. 21° 12′ 57″ E., 2,153.92 feet, thence from angle point No. 21 S. 42° 24′ 55″ E., 2,436.8 feet to angle point No. 22 from which B. M. 77 M bears N. 12° 47′ 11″ W., 3,903.66 feet, thence from angle point No. 22 S. 45° 25′ 45″ E., 887.2 feet to angle point No. 23 from which B. M. Noah bears S. 27° 41′ 32″ W., 10,671.31 feet, thence from angle point No. 23, S. 37° 10′ 48″ E., 857.5 feet to angle point No. 24, thence from angle point No. 24, S. 20° 25′ 44″ E., 901.6 feet to angle point No. 25, from which B. M. Noah bears S. 36° 10′ 39″ W., 9,812.76 feet, thence from angle point No. 25, S. 35° 08′ 41″ E., 1,515.3 feet to angle point No. 26, thence from angle point No. 26 S. 18° 36′ 38″ E., 825.4 feet to angle point No. 27, from which B. M. Noah bears S. 49° 35′ 12″ W., 9,099.67 feet, thence from angle point No. 27, S. 11° 05′ 38″ E., 791 feet to angle point No. 28, thence from angle point No. 28, S. 17° 48′ 44″ E., 785.6 feet to angle point No. 29 from which B. M. Noah bears S. 59° 08′ 12″ W., 8,528.73 feet and P. B. M. Albemarle bears S. 38° 08′ 12″ E., 4,648.62 feet, thence from angle point No. 29 S. 7° 11′ 03″ E., 1,703.2 feet to angle point No. 30, thence from angle point No. 30, S. 5° 17′ 45″ W., 834.3 feet to angle point No. 31 from which P. B. M. Albemarle bears S. 67° 26′ 42″ E., 2,961.20 feet, thence from angle point No. 31 S. 28° 30′ 26″ W., 860.3 feet to angle point No. 32 from which B. M. Noah bears S. 81° 08′ 12″ W., 7,131.56 feet and P. B. M. Albemarle bears S. 83° 06′ 50″ E., 3,168.15 feet thence from angle point No. 32 S. 15° 09′ 30″ E., 759.1 feet to angle point No. 33 from which P. B. M. Albemarle bears N. 83° 10′ 20″ E., 2,967.89 feet thence from angle point No. 33 S. 17° 47′ 47″ W., 1,656.9 feet to angle point No. 34, from

which P. B. M. Albemarle bears N. 60° 47′ 36″ E., 3,956.21 feet, thence from angle point No. 34, S. 42° 26′ 12″ W., 716.2 feet to angle point No. 35, thence from angle point No. 35, S. 30° 20′ 11″ W., 872.3 feet to angle point No. 36 from which B. M. Noah bears N. 66° 47′ 43″ W., 6,326.40 feet and B. M. 97/a bears S. 12° 28′ 27″ W., 4,996.20 feet, thence from angle point No. 36 S. 31° 11′ 56″ W., 1,187.4 feet to angle point No. 37, thence from angle point No. 37, S. 45° 04′ 26″ W., 768.5 feet to angle point No. 38 from which B. M. Noah bears N. 48° 58′ 21″ W., 6,171.20 feet and B. M. 97/a bears S. 1° 23′ 16″ E., 3,320.88 feet, thence from angle point No. 38 S. 53° 33′ 10″ W., 794.5 feet to angle point No. 39, thence from angle point No. 39 S. 44° 03′ 56″ W., 784.8 feet to angle point No. 40 from which B. M. Noah bears N. 34° 18′ 24″ W., 6,157.94 feet and B. M. 97/a bears S. 28° 59′ 11″ E., 2,610.77 feet, thence from angle point No. 40 S. 52° 09′ 41″ W., 1,622.8 feet to angle point No. 41 from which B. M. Noah bears N. 19° 47′ 51″ W., 6,464.06 feet and B. M. 97/a bears S. 63° 10′ 09″ E., 2,854.16 feet, thence from angle point No. 41 S. 60° 15′ 21″ W., 937.1 feet to angle point No. 42 from which B. M. Noah bears N. 11° 51′ 40″ W., 6,689.70 feet and B. M. 97/a bears S. 76° 14′ 17″ E., 3,460.78 feet, thence from angle point No. 42 S. 61° 44′ 23″ W., 875.2 feet to angle point No. 43 from which B. M. 97/a bears S. 84° 20′ 55″ E., 4,151.66 feet and reference monument No. 2 bears S. 9° 08′ 43″ W., 5,810.63 feet, thence from angle point No. 43, S. 70° 05′ 50″ W., 1,041.9 feet to angle point No. 44, thence from angle point No. 44 S. 58° 31′ 11″ W., 901.9 feet to angle point No. 45 from which reference monument No. 2 bears S. 9° 32′ 35″ E., 4,980.2 feet, thence from angle point No. 45, S. 84° 07′ 48″ W., 958.2 feet to angle point No. 46, thence from angle point No. 46 S. 52° 52′ 15″ W., 738.4 feet to angle point No. 47 from which reference monument No. 2 bears S. 28° 27′ 50″ E., 4,967.83 feet, and Foster triangulation station bears N. 50° 24′ 07″ W., 7,432.22 feet, thence from angle point No. 47 S. 23° 16′ 03″ W., 699.7 feet to angle point No. 48 from which Henderson triangulation station bears S. 85° 24′ 35″ W., 10,511.08 feet and B. M. C. H. B. 3 bears S. 46° 01′ 02″ E., 2,367.71 feet, thence from angle point

No. 48 S. 40° 35′ 03″ W., 1,461.2 feet to angle point No. 49 from which Foster triangulation station bears N. 34° 44′ 18″ W., 7,897.07 feet, and B. M. 97/3 bears N. 42° 07′ 42″ W., 9,500.07 feet, and Henderson triangulation station bears N. 88° 23′ 15″ W., 9,530.49 feet, and B. M. C. H. B. 2 bears S. 71° 37′ 03″ E., 3,085.68 feet and reference monument No. 2 bears S. 53° 58′ 08″ E., 4,445.20 feet and P. B. M. Bellevue bears S. 31° 57′ 37″ E., 3,833.46 feet, thence from angle point No. 49 S. 51° 45′ 00″ W., 1,830 feet to angle point No. 50 from which reference monument No. 2 bears S. 73° 35′ 35″ E., 5,245.66 feet and P. B. M. Bellevue bears S. 58° 33′ 39″ E., 4,062.70 feet, and B. M. 97/3 bears N. 31° 06′ 43″ W., 9,552.32 feet, thence from angle point No. 50 S. 62° 30′ 00″ W.; 3,210.0 feet to angle point No. 51 the southern terminus of the boundary line in the river, from which B. M. Noah bears N. 32° 50′ 02″ E., 15,113.40 feet and reference monument No. 2 bears due east 7,879.62 feet, and P. B. M. Bellevue bears S. 84° 14′ 34″ E., 6,345.84 feet and Foster triangulation station bears N. 1° 21′ 43″ W., 9,106.75 feet and Henderson triangulation station bears N. 61° 11′ 54″ W., 5,982.43 feet and B. M. C. H. B. 4 bears S. 66° 22′ 10″ E., 3,026.50 feet, and B. M. C. H. B. 5 bears S 60° 40′ 39″ E., 3,531.63 feet.

Descriptions and geographic positions on 1927 North American datum of boundary line monuments and reference monuments along or adjacent to the Louisiana-Mississippi boundary line in the valley of the Mississippi River between the parallel of 32 degrees 39 minutes north latitude and the division line between Issaquena and Warren Counties, Mississippi, (as extended westward).

Monuments

The principal monuments consist of a concrete base 20 by 20 by 20 inches set in the ground with top flush with surface. A galvanized metal form 3 feet long, 14 inches in diameter at base, 8 inches in diameter at top, filled with concrete is embedded 6 inches in the concrete base; 30 inches showing above ground. The weight of each monument is about half a ton. State line monuments of this

BRONZE TABLET IMBEDDED IN TOP OF EACH
BOUNDARY LINE MONUMENT

style were set at angle points 0, 3, 7, 10, and 15. Reference monuments of similar style are numbered 1, 2, 3, and 5. In center of top of the metal form a bronze tablet with inscription shown facing page 10 is cemented for boundary line monuments and a similar tablet with inscription shown facing page 20 is cemented for reference points or marks. A smaller type of monument of a temporary nature, consisting of a creosoted wooden post 39 inches long and 6 inches square set 32 inches in the ground was set at angle points in the State boundary line numbered 1, 2, 4, 5, 6, 8, 9, 11, 12, 13, 14, and 16.

Several bench mark and triangulation monuments of the Mississippi River Commission and Corps of Engineers, U. S. Army, were also utilized as reference marks and their descriptions are therefore included in this report.

Geographic positions of all marks and monuments are given on the 1927 North American Datum, determined from connections made with first-order triangulation stations of the U. S. Coast and Geodetic Survey in this locality.

Positions of marks by the Corps of Engineers and Mississippi River Commission given on Memphis astronomic datum have been corrected to 1927 North American Datum by subtracting 0.81″ from latitudes and 0.15″ from longitudes.

Boundary Line Monument Zero

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, just above Newman cut-off and about 540 feet north of the present bank of Mississippi River on mostly open ground with some light brush.

It is a co ete monument with base 20 x 20 x 18 inches surmounted by frustum of a cone, encased in galvanized metal form 36 inches long with base diameter of 14 inches and top diameter of 8 inches. In top is placed a bronze tablet marked "Line Monument O", and is 30 inches above the base.

Witness marks:

A triangle cut on cottonwood tree 7″ in diam., dist. 36 ft. True Bearing S. 86° 26′ E.

A triangle cut on cottonwood tree 7″ in diam., dist. 66 ft. True Bearing S. 18° 16′ E.

A triangle cut on cottonwood tree 8″ in diam., dist. 86 ft. True Bearing N. 25° 06′ W.

Latitude 32° 36′ 48.23″. Longitude 91° 02′ 56.39″.

To monument	True Bearing	Distance—Feet
Foster Triangulation Station	S. 16° 14′ 57″ W.	4,695.85
B. M. 97/3	S. 38 52 42 W.	5,076.94
B. M. 76M	N. 25 48 40 W.	10,316.10
B. M. Noah	S. 82 39 49 E.	7,155.71

Temporary Boundary Line Monument No. 1

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, 443.7 feet N. 38° 54′ E. from Boundary Monument Zero. On fairly open ground with some small brush adjacent. Marked by a creosoted wooden post 39 inches long and 6 inches square, set 32 inches in ground and a small nail in top marking angle point. No reference marks.

Latitude 32° 36′ 51.65″. Longitude 91° 02′ 53.13″.

Temporary Boundary Line Monument No. 2

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, 665.1 feet S. 31° 15′ 30″ W. from concrete boundary monument No. 3. It is in a depression and amid thick small brush.

Marked by a creosoted wooden post 39 inches long and 6 inches square set 32 inches in ground and a small nail in top marking angle point. No reference marks.

Latitude 32° 36′ 56.99″. Longitude 91° 02′ 48.04″.

Boundary Line Monument No. 3

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, on west side of Newman Towhead and about 2000 feet north of Mississippi River present bank. It is on ground partly open and partly brushy.

A concrete monument with base 20 x 20 x 20 inches surmounted by frustum of a cone, encased in galvanized metal form 36 inches long with base diameter of 14 inches and top diameter of 8 inches. In top is placed a bronze tablet

marked "Line Monument 3", and is 30 inches above the base.

Witness marks:

Triangle cut on cottonwood tree 7" in diam. dist. 36.5 ft. True Bearing S. 34° 35' W.

Triangle cut on cottonwood tree 7" in diam. dist. 20 ft. True Bearing N. 53° 05' E.

Triangle cut on cottonwood tree 6" in diam. dist. 5.5 ft. True Bearing S. 37° 05' E.

Latitude 32° 37' 02.61". Longitude 91° 02' 44.01".

To monument	True Bearing	Distance—Feet
B. M. 76 M	N. 35° 19' 10" W.	9,600.74
B. M. Noah	S. 68 35 22 E.	6,485.53

Temporary Boundary Line Monument No. 4

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, 950.3 feet N. 19° 26' E. from concrete Boundary Monument No. 3, in thick brush.

A creosoted wooden post 39 inches long and 6 inches square, set 32 inches in ground, and a small nail in top marking angle point.

Reference marks:

Triangle cut on cottonwood tree 4 inches diam., dist. 13 ft., true bearing N. 55° 26' E.

Triangle cut on cottonwood tree 4 inches diam., dist. 9 ft., true bearing N. 73° 16' E.

Latitude 32° 37' 11.48". Longitude 91° 02' 40.31".

Temporary Boundary Line Monument No. 5

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, 1501 feet north and 776 feet east from concrete boundary monument No. 3 in thick brush and small timber.

A creosoted wooden post 39 inches long and 6 inches square, set 32 inches in ground, and a small nail in top marking angle point.

Reference marks:

Triangle cut on cottonwood tree 7 inches diam. dist. 16 ft. true bearing S. 74° 26' E.

Triangle cut on cottonwood tree 12 inches diam. dist. 19 ft. true bearing S. 25″ 04′ W.

Triangle cut on cottonwood tree 8 inches diam. dist. 26 ft. true bearing N. 58° 07′ E.

Latitude 32° 37′ 17.47″. Longitude 91° 02′ 34.93″.

To monument	True bearing	Distance—Feet
B. M. 76 M	N. 44° 58′ 22″ W.	8,951.39
B. M. Noah	S. 53 40 24 E.	6,530.94

Temporary Boundary Line Monument No. 6

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, 849.14 feet S. 17° 31′ 45″ W. from concrete boundary monument No. 7 in thick timber and brush.

A creosoted wooden post 39 inches long and 6 inches square, set 32 inches in ground, and a small nail in top marking angle point.

Reference marks:

Triangle cut on cottonwood tree 6 inches in diam. dist. 18.5 ft. true bearing N. 82° 56′ E.

Triangle cut on willow tree 11 inches in diam. dist. 11 ft. true bearing S. 12° 27′ W.

Triangle cut on cottonwood tree 12 inches in diam. dist. 30 ft. true bearing S. 82° 10′ W.

Latitude 32° 37′ 25.14″. Longitude 91° 02′ 29.58″.

Boundary Line Monument No. 7

On Issaquena County, Mississippi and East Carroll Parish, Louisiana —, on west side of Newman Towhead about 5800 feet by line north and east from present bank of Mississippi River. It is surrounded by brush and timber.

A concrete monument with base 20x20x20 inches surmounted by frustum of a cone, encased in galvanized metal form 36 inches long with base diameter of 14 inches and top diameter of 8 inches. In top is placed a bronze tablet marked "Line Monument 7", and is 30 inches above the base.

Witness marks:

Triangle cut on sycamore tree 6″ in diam., dist. 13.5 ft. true bearing N. 42° 52′ E.

Triangle cut on willow tree 11″ in diam., dist 19.5 ft. true bearing S. 75° 18′ E.

Triangle cut on cottonwood tree 6″ in diam., dist. 16.4 ft. true bearing S. 8° 32′ E.

Latitude 32° 37′ 33.15″. Longitude 91° 02′ 26.60″.

To monument	True Bearing	Distance—Feet
B. M. 76 M	N. 56° 00′ 07″ W.	8,491.20
B. M. Noah	S. 39 49 40 E.	7,101.42

Temporary Boundary Line Monument No. 8

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, 845.3 feet N. 1° 18′ W. from concrete boundary monument No. 7, in timber with little brush.

A creosoted wooden post 39 inches long and 6 inches square, set 32 inches in ground, and a small nail in top marking angle point.

Reference marks:

Triangle cut on tree 12 inches in diam. dist. 39 ft. true bearing N. 76° 38′ W.

Triangle cut on tree 9 inches in diam. dist. 19.7 ft. true bearing N. 6° 42′ E.

Triangle cut on tree 14 inches in diam. dist. 29 ft. true bearing S. 45° 08′ E.

Latitude 32° 37′ 41.50″ Longitude 91° 02′ 26.82″.

Temporary Boundary Line Monument No. 9

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, 744.25 feet S. 8° 56′ 40″ W. from concrete boundary monument No. 10, in timber and with little brush.

A creosoted wooden post 39 inches long and 6 inches square, set 32 inches in ground, and a small nail in top marking angle point.

Reference marks:

Triangle cut on willow tree 8 inches in diam. dist. 10.8 ft. true bearing N. 35° 39′ W.

Triangle cut on willow tree 7 inches in diam. dist. 8.2 ft. true bearing N. 84° 48′ E.

Triangle cut on willow tree 10 inches in diam. dist. 16.7 ft. true bearing S. 41° 15′ E.

Latitude 32° 37′ 50.88″. Longitude 91° 02′ 26.00″.

Boundary Line Monument No. 10

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, on west side of Newman Towhead, about 8300 feet north and east from present bank of Mississippi River. It is standing amid willow and cottonwood timber with little brush.

A concrete monument with base 20x20x20 inches surmounted by frustum of a cone, encased in galvanized metal form which is 36 inches long with base 14 inches in diameter and top 8 inches in diameter. In top is placed a bronze tablet marked "Line Monument 10" and is 29 inches above the base.

Witness marks:

Cross (X) cut on willow tree 9" in diam. dist. 23 ft. True Bearing S. 41° 00′ W.

Cross (X) cut on willow tree 9" in diam. dist. 17 ft. True Bearing N. 52° 30′ W.

Cross (X) cut on willow tree 9" in diam. dist. 28.4 ft. True Bearing N. 42° 47′ E.

Cross (X) cut on willow tree 6" in diam. dist. 7.5 ft. True Bearing S. 64° 00′ E.

Latitude 32° 37′ 58.16". Longitude 91° 02′ 24.65".

To monument	True Bearing	Distance—Feet
B. M. 76 M	N. 72° 52′ 33" W.	7,540.45
B. M. Noah	S. 28 45 58 E.	9,105.27

Temporary Boundary Line Monument No. 11

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, 668.4 feet N. 27° 14′ E. from concrete boundary monument No. 10 in timber with little brush.

A creosoted wooden post 39 inches long and 6 inches in diameter, set 32 inches in ground, with nail in top marking angle point.

Witness marks:

Triangle cut on willow tree 7" in diam. dist. 14 ft. True Bearing S. 85° 28′ W.

Triangle cut on willow tree 8" in diam. dist. 13 ft. True Bearing N. 6° 14′ E.

Triangle cut on willow tree 9" in diam. dist. 25 ft. True Bearing S. 69° 36′ E.

Latitude 32° 38′ 04.04". Longitude 91° 02′ 21.07".

Temporary Boundary Line Monument No. 12

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, 1334 feet north and 611 feet east of concrete boundary monument No. 10 in timber with little brush.

A creosoted wooden post 39 inches long and 6 inches square, set 32 inches in ground, with small nail in top marking angle point.

Witness marks:

A triangle cut on willow tree 8″ in diam. dist. 19 ft., True Bearing N. 78° 25′ W.

A triangle cut on willow tree 8″ in diam. dist. 3.3 ft., True Bearing N. 16° 35′ W.

A triangle cut on willow tree 7″ in diam. dist. 13.8 ft., True Bearing N. 21° 20′ E.

A triangle cut on willow tree 8″ in diam. dist. 17 ft., True Bearing S. 36° 45′ E.

Latitude 32° 38′ 11.36″. Longitude 91° 02′ 17.50″.

To monument	True Bearing	Distance—Feet
B. M. 76 M.....	N. 83° 32′ 03″ W.	7,867.14
Reference Monument No. 1.....	N. 24 33 44 E.	5,366.77

Temporary Boundary Line Monument No. 13

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, 718 feet south and 1443 feet west from concrete boundary monument No. 15, in timber with little brush.

A creosoted wooden post 39 inches long and 6 inches square, set 32 inches in ground and a small nail in top marking angle point.

Witness Marks:

Triangle cut on willow tree 9″ in diam., dist. 20.8 ft., True Bearing N. 25° 05′ W.

Triangle cut on willow tree 9″ in diam., dist. 21 ft., True Bearing S. 68° 05′ E.

Triangle cut on willow tree 9″ in diam., dist. 21 ft., True Bearing S. 35° 30′ W.

Latitude 32° 38′ 17.20″. Longitude 91° 02′ 11.58″.

To monument	True Bearing	Distance—Feet
B. M. 76 M.....	N. 87° 57′ 36″ W.	8,328.62
Reference monument No. 1.....	N. 21 53 41 E.	4,625.09

Temporary Boundary Line Monument No. 14

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, 795.7 feet S. 73° 22′ W. from concrete boundary monument No. 15, in timber with little brush.

A creosoted wooden post 39 inches long and 6 inches square, set 32 inches in ground, and small nail in top marking angle point.

Witness marks:

Triangle cut on willow tree 9″ in diam., dist. 20 ft., True Bearing N. 71° 25′ W.

Triangle cut on willow tree 10″ in diam., dist. 10 ft., True Bearing N. 10° 21′ E.

Triangle cut on willow tree 11″ in diam., dist. 16 ft., True Bearing S. 25° 25′ E.

Latitude 32° 38′ 22.05″. Longitude 91° 02′ 03.63″.

Boundary Line Monument No. 15

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, in northwest portion of Newman Towhead, about 3400 feet south of levee. It is surrounded by mostly willow timber with little underbrush.

A concrete monument with base 20x20x20 inches surmounted by frustum of a cone, encased in galvanized metal form 36 inches long with base diameter of 14 inches and top diameter of 8 inches. In top is placed a bronze tablet marked "Line Monument 15", and is 30 inches above the base.

Witness marks:

Triangle cut on willow tree 9″ in diam., dist. 14 ft., True Bearing N. 33° 00′ W.

Triangle cut on willow tree 12″ in diam., dist. 25 ft., True Bearing N. 10° 37′ E.

Triangle cut on willow tree 9″ in diam., dist. 12.5 ft., True Bearing S. 67° 13′ E.

Latitude 32° 38′ 24.30″. Longitude 91° 01′ 54.71″.

To monument	True Bearing	Distance—Feet
Reference monument No. 1.....	N. 4° 30′ 47″ E.	3,584.81
B. M. Noah.....	S. 9 43 36 E.	10,778.51

Temporary Boundary Line Monument No. 16

On Issaquena County, Mississippi and East Carroll Parish, Louisiana line, about 1100 feet south of old Albemarle bend, 1390.4 feet N. 14° 00′ E. from concrete boundary monument No. 15, on low mucky ground with timber on south and willow brush on north.

A creosoted wooden post 39 inches long and 6 inches square, set 32 inches in ground, and a small nail in top marking angle point. No witness marks.

Latitude 32° 38′ 37.65″. Longitude 91° 01′ 50.78″.

To monument	True Bearing	Distance—Feet
Boundary Line Monument No. 15.	S. 14° 00′ 04″ W.	1,390.35
Reference monument No. 1.....	N. 1 23 45 W.	2,225.36

Reference Point Monument No. 1, Issaquena County, Mississippi

About 1 mile east and north down the levee from Tri-County Hunting Club, in approximate locality of corner of sections 4, 5, 8 & 9, T. 9 N. R. 8 W., apparently in southwest corner of section 4, 170 feet south of roadway which parallels levee, 45 feet south of unoccupied cabin with three outbuildings, 170 feet north of levee at a point which is about 3680 feet easterly from west end of a levee tangent which is nearly 6100 feet long. A concrete monument with base 20 by 20 by 18 inches surmounted by frustum of a cone encased in galvanized metal form 34 inches long with base diameter of 14 inches and top diameter of 8 inches. In top is a bronze tablet marked "Reference Point No. 1." Top is 29 inches above base.

To transit line point 17 on top of levee, a wooden post 6 inches square and 39 inches long is 683.86 feet in true bearing S. 63° 58′ 30″ W.

Latitude 32° 38′ 59.66″. Longitude 91° 01′ 51.41″.

To monument or angle point	True Bearing	Distance—Feet
Angle Point No. 12.....	S. 24° 33′ 59″ W.	5,366.77
Boundary Line Monument No. 15.	S. 4 30 49 W.	3,584.81
Angle Point No. 13.....	S. 21 53 52 W.	4,625.09
Angle Point No. 18.....	S. 56 44 06 E.	2,161.15
Angle Point No. 17 B.....	S. 23 14 52 E.	2,180.06
Temporary boundary line Monument No. 16.....	S. 1 23 45 E.	2,225.36

Reference Point Monument No. 2, on Issaquena-Warren County Line, Mississippi

3148 feet west of southeast corner of section 33 T. 9 N. R. 8 W., 997 feet East of top of present levee, 203 feet east of a public road and 12 feet west of a large hackberry tree marked as a line tree. Surrounded by brush and timber. A concrete monument with base 20x20x18 inches surmounted by frustum of a cone encased in galvanized metal form with base diameter of 14 inches and top diameter of 8 inches, with bronze tablet in top stamped "Reference Monument No. 2." Top of monument is 29 inches above base.

Latitude 32° 34′ 33.535″. Longitude 91° 01′ 37.142″.

To monument or angle point	True Bearing	Distance—Feet
Reference Monument No. 3	Due West	536.83
Angle Point No. 51	Due West	7,879.62
Angle Point No. 50	N. 73° 35′ 03″ W.	5,245.66
Angle Point No. 49	N. 53 57 45 W.	4,445.20
Angle Point No. 47	N. 28 27 35 W.	4,967.83
Angle Point No. 45	N. 9 32 30 W.	4,980.02
Angle Point No. 43	N. 9 08 37 E.	5,810.63
B. M. 97/a	N. 43 29 33 E.	7,344.38

Reference Point Monument No. 3, Issaquena-Warren County Line, Mississippi

On south side of section 33 T. 9 N. R. 8 W., 460 feet east of top of levee and 335 feet west of center of public road crossing county line. A concrete monument with base 20x20x20 inches surmounted by concrete frustum of a cone, encased in galvanized metal form 34 inches long with base diameter of 14 inches and top diameter of 8 inches, with bronze tablet in top marked "Reference Point No. 3."

Top is 28 inches above base.

Monument is in timber and brush.

To reference monument No. 2 is 536.83 feet due east.

To reference monument No. 4 is 460.02 feet due west.

Latitude 32° 34′ 33.535″. Longitude 91° 01′ 43.415″.

Reference Point Monument No. 4, Issaquena-Warren County Line, Mississippi

On top of present levee (1932). A concrete block 15 by 15 by 15 inches set flush with surface of ground with bronze tablet in top marked "Reference Point No. 4."

BRONZE TABLET IMBEDDED IN TOP OF EACH REFERENCE POINT MONUMENT

This is station 509 plus 1166.2 of U. S. Engineer's transit line on top of levee and 8 feet west of station 9287 plus 15 of the Mississippi Levee Board's transit line which is marked by iron posts every 1000 feet.

Reference Monument No. 3 is 460.02 feet due east.

Reference Monument No. 5 is 1314.77 feet due west.

Latitude 32° 34′ 33.535″. Longitude 91° 01′ 48.791″.

Reference Point Monument No. 5, Issaquena-Warren County Line, Mississippi

1315 feet west of top of present levee (1932) in bushy bottom land with some large timber to the north. A concrete monument with base 20 by 20 by 20 inches surmounted by concrete frustum of cone, encased in galvanized metal form 34 inches long with base diameter of 14 inches and top diameter of 8 inches with bronze tablet in top marked "Reference Monument No. 5."

Top is 28 inches above base.

Triangle cut on pecan tree 7 inches diameter, distance 36.5 feet, True bearing N. 4° 30′ E.

Triangle cut on pecan tree 10 inches diameter, distance 120 feet, True bearing N. 3° 25′ E.

Angle Point No. 51 is 5568.0 feet due west.

Latitude 32° 34′ 35.535″. Longitude 91° 02′ 04.155″.

Marks of the Mississippi River Commission and of the Corps of Engineers, U. S. Army used as Reference Marks by the Louisiana-Mississippi Boundary Line Commission, 1932

B. M. Noah, East Carroll Parish, Louisiana

A mark of the Mississippi River Commission in south central part of Newman Towhead, 0.5 mile north of bank of Mississippi River, 1.5 mile north of Chotard Landing, about 1500 feet easterly from open pasture land, surrounded by cottonwood and willow timbers.

Station mark: An iron pipe 4 inches in diameter and 4 feet long resting on a vitrified tile 18 inches square and 4 inches thick. Top of pipe is but little above the level of

ground surface, and in 1932 was filled around with concrete block 20 inches square.

Elevation of bolt in tile underground, 90.04 feet.

Elevation of top of cap on post, 94.04 feet.

Witness marks:

Cottonwood tree, 24 inches diameter, S. 40° W., 35 feet distant.

Cottonwood tree, 18 inches diameter, S. 49° W., 19.5 feet distant.

Cottonwood tree, 26 inches diameter, S. 78° 30′ W., 8 feet distant.

Cottonwood tree, 24 inches diameter, N. 46° W., 18.5 feet distant.

Willow tree, 15 inches diameter, N. 18° W., 50 feet distant.

Latitude 32° 36′ 39.180″. Longitude 91° 01′ 33.424″.

To Boundary Monument or Angle Point	True Bearing	Distance—Feet
Angle Point No. 51	S. 32° 50′ 53″ W.	15,113.40
Monument No. 0	N. 82 39 04 W.	7,155.71
Monument No. 3	N. 68 34 44 W.	6,485.53
Angle Point No. 5	N. 53 39 51 W.	6,530.94
Monument No. 7	N. 39 49 11 W.	7,101.42
Monument No. 10	N. 28 45 31 W.	9,105.27
Monument No. 15	N. 9 43 25 W.	10,778.51
Angle Point No. 23	N. 27 41 01 E.	10,671.31
Angle Point No. 25	N. 36 10 03 E.	9,812.76
Angle Point No. 27	N. 49 34 28 E.	9,099.67
Angle Point No. 29	N. 59 07 25 E.	8,528.73
Angle Point No. 32	N. 81 07 28 E.	7,131.56
Angle Point No. 36	S. 66 48 20 E.	6,326.40
Angle Point No. 38	S. 48 58 50 E.	6,171.20
Angle Point No. 40	S. 34 18 46 E.	6,157.94
Angle Point No. 41	S. 19 48 05 E.	6,464.06
Angle Point No. 42	S. 11 51 49 E.	6,689.70

B. M. 97/3, East Carroll Parish, Louisiana

A mark of the Mississippi River Commission, on Willow Point, 380 meters back of river bank at point 250 meters above Willow Point Landing; 250 meters back of bank of chute at point 420 meters below main river bank, in timber 30 meters below line between Bell and Willow Point Plantations.

Station mark: A stone post covered with sediment.

Latitude 32° 36′ 09.12″. Longitude 91° 03′ 33.64″.

Elevation of top of post, 98.6 feet.

To monument or Angle Point	True Bearing	Distance—Feet
Monument Zero	N. 38° 52′ 22″ E.	5,076.94
Foster Triangulation Station	S. 73 28 12 E.	1,953.45
Angle Point No. 49	S. 42 08 22 E.	9,500.07
Angle Point No. 50	S. 31 07 14 E.	9,552.32

Henderson, East Carroll Parish, Louisiana

A secondary triangulation station of the Mississippi River Commission on right bank of Mississippi River in woods one mile above store building on the Henderson Plantation, 0.5 mile above a point opposite Brunswick Landing.

Station mark: An old concrete post with gas pipe set beside it.

Latitude 32° 35′ 02.05″. Longitude 91° 04′ 10.49″.

Elevation; top of concrete post, 93.02 feet.

To Angle Point	True Bearing	Distance—Feet
Angle Point No. 48	N. 85° 23′ 29″ E.	10,511.08
Angle Point No. 49	S. 88 24 15 E.	9,530.49
Angle Point No. 51	S. 61 12 27 E.	5,982.43

Foster, East Carroll Parish, Louisiana

A secondary triangulation point of the Mississippi River Commission on right bank of Mississippi River on first towhead below Willow Point, 630 meters down chute from head of bar and back 160 meters from west bank of towhead; in cottonwood timber.

Station mark: Iron pipe set on vitrified tile underground mark.

Elevation; bolt in tile underground, 95.94 feet.

Elevation; cap on pipe underground, 99.92 feet.

Latitude 32° 36′ 03.62″. Longitude 91° 03′ 11.75″.

To monument or Angle Point	True Bearing	Distance—Feet
B. M. 97/3	N. 73° 28′ 00″ W.	1,953.45
Monument Zero	N. 16 14 49 E.	4,695.85
Angle Point No. 47	S. 50 24 43 E.	7,432.22
Angle Point No. 49	S. 34 44 46 E.	7,897.07
Angle Point No. 51	S. 1 21 44 E.	9,106.75

P. B. M. Bellevue, Warren County, Mississippi.

A mark of the Mississippi River Commission on the Bellevue plantation, 0.6 mile southeast of Bellevue Landing, in northwest part of section 4 T. 18 N. R. 2 E.; 18.6

meters back of center of main levee, on top of small private levee and near its upper end, 13 meters east of junction with main levee, 200 meters northwest of Mt. Zion Church.

Station mark: An iron post on tile underground mark.

Latitude 32° 34′ 27.23″. Longitude 91° 01′ 55.44″.

Elevation of bolt in tile, 100.617 feet.

Elevation of cap on pipe, 104.622 feet.

To Angle Point	True Bearing	Distance—Feet
Angle Point No. 51.....	N. 84° 13′ 54″ W.	6,345.84
Angle Point No. 50.....	N. 58 33 17 W.	4,062.70
Angle Point No. 49.....	N. 31 57 25 W.	3,833.16

P. B. M. Albemarle, Issaquena County, Mississippi

A mark of the Mississippi River Commission on left bank of Mississippi River east of Newman Towhead, 2.5 miles above Chotard Landing, 1,660 meters above junction of old and new levees, 3 miles northeast along levee from Issaquena-Warren county line, near center of section 23 T. 9 N. R. 8 W.

Station mark: Iron post on tile underground mark.

Latitude 32° 36′ 46.30″. Longitude 90° 59′ 34.28″.

Elevation of cap on pipe, 93.738 feet.

Elevation of bolt in tile, 89.738 feet.

To Angle Point	True Bearing	Distance—Feet
Angle Point No. 34.....	S. 60° 47′ 58″ W.	3,956.21
Angle Point No. 33.....	S. 83 10 38 W.	2,967.89
Angle Point No. 32.....	N. 83 06 30 W.	3,168.15
Angle Point No. 31.....	N. 67 26 25 W.	2,961.20
Angle Point No. 29.....	N. 38 07 54 W.	4,648.62

P. B. M. 96/1, Issaquena County, Mississippi

A mark of the Mississippi River Commission, in west central part of section 7 T. 9 N. R. 8 W. on left bank of Mississippi River, on the Dunbarton Plantation; northwardly from Willow Point; 1.25 mile along levee above old Duvall Landing; 400 meters above junction of old and new levees at Burleigh cotton gin; 440 meters back of levee, 674 meters 125° 30′ from Burleigh gin, in low ground at edge of brush and scattering timber; 25 meters northwest of a large spreading willow.

Station mark: Iron post set on stone subsurface mark.

Latitude 32° 38′ 24.04″. Longitude 91° 03′ 59.38″.

Elevation, mean gulf level, top of stone 93.672 feet.
Elevation, mean gulf level, cap on pipe 97.670 feet.
Reference to P. B. M. 96/2.
Approximate true bearing S. 6° 42′ W.
Approximate distance 610.6 meters.

P. B. M. 96/2, Issaquena County, Mississippi

A mark of the Mississippi River Commission near southwest corner section 7 T. 9 N. R. 8 W., on left bank of Mississippi River, north of Willow Point; 1.25 miles above old Duvall Landing; on the old Dunbarton Plantation; 160 meters outside of levee at a point 500 meters above junction of old and new levees.

Station mark: Stone post, top about level with ground.
Latitude 32° 38′ 04.35″. Longitude 91° 04′ 02.11″.
Elevation, top of stone post 97.528 feet.
Reference to P. B. M. 96/1, true bearing N. 6° 42′ E., distance 2,003.3 feet.

P. B. M. 97/a, Issaquena County, Mississippi

A mark of the Mississippi River Commission, nearly on line between sections 27 and 34 T. 9 N. R. 8 W., 0.75 mile east from foot of Newman Towhead and 0.85 mile east from Chotard Landing, on east-west private road at northeast corner of junction of roads, in southwest corner of field 6 meters north of center of east-west road, 21 meters from northeast corner of store building 90 meters from northeast corner of cotton gin.

Station mark: Iron post set over tile underground mark.
Latitude 32° 35′ 26.25″. Longitude 91° 00′ 38.063″.
Elevation, bolt in tile underground 92.03 feet.
Elevation, bolt in cap on post 96.02 feet.

To Angle Point	True Bearing	Distance—Feet
Angle Point No. 43	N. 84° 20′ 29″ W.	4,151.66
Angle Point No. 42	N. 76 13 56 W.	3,460.78
Angle Point No. 41	N. 63 09 53 W.	2,854.16
Angle Point No. 40	N. 28 59 03 W.	2,610.77
Angle Point No. 38	N. 1 23 16 W.	3,320.88
Angle Point No. 36	N. 12 28 20 E.	4,996.20

B. M. 76 M., Issaquena County, Mississippi

A mark of the Corps of Engineers, U. S. A., on left bank of Mississippi River approximately 1,200 feet northeast of old Magna Vista Store, near foundation of old house, on property of Mr. Mayer, 1,500 feet to land side of levee station 8780, 500 feet east of gravel road, in open field under 24 inch pecan tree.

Station mark: Iron post with brass cap on stone subsurface marker.

Latitude 32° 38′ 20.12″. Longitude 91° 03′ 48.91″.

Elevation, mean Gulf level, bolt 93.977 feet.

Elevation, mean Gulf top of cap 97.992 feet.

References to P. B. M. 96/1, true bearing N. 66° 07′ 10″ W., distance 978.56 feet.

Triangular blaze on 24 inch pecan tree, true bearing S. 43° 31″ E., distance 11 feet.

Triangular blaze on 24 inch cottonwood tree, true bearing S. 69° 47′ 00″ E., distance 94 feet.

Monument or Angle Point	True Bearing	Distance—Feet
Angle Point No. 13	S. 87° 58′ 29″ E.	8,328.62
Angle Point No. 12	S. 83 32 52 E.	7,867.14
Monument No. 10	S. 72 53 19 E.	7,540.45
Monument No. 7	S. 56 00 51 E.	8,491.20
Angle Point No. 5	S. 44 59 02 E.	8,951.39
Monument No. 3	S. 35 19 45 E.	9,600.74
Monument Zero	S. 25 49 08 E.	10,316.10

B. M. 77 M., Issaquena County, Mississippi

A mark of the Corps of Engineers, U. S. A., on left bank of Mississippi River, approximately 6 miles north along levee from Warren-Issaquena County line, 5 miles north along levee from Chotard Landing; on Robbins-Bonelli property, 500 feet to land side of levee at levee station 8950, at intersection of pecan tree hedge row which runs east and west and wire fence which runs north and south, 500 feet east of old St. Luke's Methodist Church, 4 feet from 24 inch pecan tree.

Station mark: Iron post with brass cap, on stone subsurface marker.

Latitude 32° 38′ 56.51″. Longitude 91° 00′ 52.94″.

Elevation, mean Gulf level, bolt 92.433 feet.

Elevation, mean Gulf top of cap 96.430 feet.

References, to transit line point 492, True bearing S. 81° 26′ 39″ W., distance 688.08 feet.

Triangular blaze on 24 inch twin pecan tree, true bearing N. 18° 24′ 00″ W., distance 26 feet.

Triangular blaze on 24 inch post oak tree, true bearing S. 2° 01′ 00″ W., distance 151 feet.

To Angle Point	True Bearing	Distance—Feet
Angle Point No. 21	S. 21° 13′ 02″ W.	2,153.92
Angle Point No. 20	S. 41 12 28 W.	2,029.51
Angle Point No. 19	S. 60 54 58 W.	2,683.53
Angle Point No. 22	S. 12 47 17 E.	3,903.66

B. M. 78 M., Issaquena County, Mississippi

A mark of the Corps of Engineers, U. S. A., on left bank of Mississippi River, 3 miles north along levee from Warren-Issaquena County line, 1,000 feet to the land side of levee station 9110, 100 feet east road that parallels levee.

Station mark: Iron post with brass cap on stone subsurface marker.

Latitude 32° 36′ 44.90″. Longitude 90° 59′ 27.32″.

Elevation, mean gulf level, bolt 88.802 feet.

Elevation, mean gulf top of cap 92.802 feet.

Reference, to P. B. M. Albemarle, True bearing N. 76° 40′ 28″ W., distance 611.68 feet.

B. M. 79 M., Warren County, Mississippi

A mark of the Corps of Engineers, U. S. A., on left bank of Mississippi River at Bellevue, 1,000 feet to land side of levee at levee station 9290, 1,000 feet east of where upper end of Brunswick protection levee joins main levee, 1,000 feet north of church which is inside of protection levee, 150 feet east of road paralleling main levee, in north edge of open field near woods line.

Station mark: Iron post with brass cap, on stone subsurface marker.

Latitude 32° 34′ 26.36″. Longitude 91° 01′ 44.34″.

Elevation, mean gulf level, bolt 93.355 feet.

Elevation, mean gulf top of cap 97.355 feet.

References, P. B. M. Bellevue, true bearing N. 84° 42′ 58″ W., distance 953.06 feet.

Triangular blaze on 24 inch pecan tree, true bearing N. 20° 37′ E., distance 51 feet.

B. M. C. H. B.-2, Issaquena County, Mississippi

A mark of the Corps of Engineers, U. S. A., on left bank of Mississippi River in thick timber, 2,500 feet north of Bellevue, 1,025 feet northwest of levee at transit line point 509,754 feet back of top bank of river.

Station mark: Iron post 3 inches diameter, with brass cap, on a concrete subsurface marker.

Latitude 32° 34′ 49.78″. Longitude 91° 01′ 44.93″.

Elevation, mean gulf level, bolt 93.966 feet.

Elevation, mean gulf top of cap 97.976 feet.

To mark or Angle Point	True Bearing	Distance—Feet
Angle Point No. 49	N. 71° 36′ 45″ W.	3,085.68
B. M. C. H. B. 3	N. 32 01 28 W.	517.40

B. M. C. H. B. 3, Issaquena County, Mississippi

A mark of the Corps of Engineers, U. S. A., on left bank of Mississippi River, in thick timber, 0.5 mile north of Bellevue, 1,542 feet northwest of levee at transit line point 509, 237 feet back of top bank of river.

Station mark: Iron post 3 inches diameter, with brass cap, on a concrete subsurface marker.

Latitude 32° 34′ 54.12″. Longitude 91° 01′ 48.13″.

Elevation, mean gulf level, bolt 95.671 feet.

Elevation, mean gulf top of cap 99.671 feet.

To mark or Angle Point	True Bearing	Distance—Feet
Angle Point No. 48	N. 46° 00′ 52″ W.	2,367.71
B. M. C. H. B. 2	S. 32 01 28 E.	517.40

B. M. C. H. B. 4, Warren County, Mississippi

A mark of the Corps of Engineers, U. S. A., on left bank of Mississippi River, in grove of hackberry trees, 0.7 mile west of Bellevue, 2,220 feet northwest of levee, at transit line point 512, 1,500 feet below Bellevue landing and 650 feet back of top bank of river.

Station mark: Iron post 3 inches diameter with brass cap, on a concrete subsurface marker.

Latitude 32° 34′ 21.53″. Longitude 91° 02′ 36.82″.

Elevation, mean gulf level, bolt 92.425 feet.

Elevation, mean gulf top of cap 96.360 feet.

To marker or Angle Point	True Bearing	Distance—Feet
Angle Point No. 51	N. 66° 21′ 53″ W.	3,026.50
B. M. C. H. B. 5	S. 30 38 28 E.	600.00

B. M. C. H. B. 5, Warren County, Mississippi

A mark of the Corps of Engineers, U. S. A., on left bank of Mississippi River, in grove of hackberry trees, 0.7 mile west of Bellevue, 1,600 feet Northwest of levee at transit line point 512, 1,900 feet south of Bellevue Landing, 1,250 feet back of top bank of river.

Station mark: Iron post 3 inches diameter with brass cap, on a concrete subsurface marker.

Latitude 32° 34′ 16.42″. Longitude 91° 02′ 33.24″.

Elevation, mean gulf level, bolt 92.018 feet.

Elevation, mean gulf top of cap 95.998 feet.

To mark or Angle Point	True Bearing	Distance—Feet
Angle Point No. 51	N. 60° 40′ 20″ W.	3,531.63
B. M. C. H. B. 4	N. 30 38 28 W.	600.00

Geographic Positions of Monuments or Angle Points

Monument or Angle Point	Latitude	Longitude	True Bearing to Next Angle Point	Distance Feet
0	32° 36′ 48.23″	91° 02′ 56.39″	N.38° 53′ 52″E.	443.72
1	32 36 51.65	91 02 53.13	N.38 53 52 E.	693.40
2	32 36 56.99	91 02 48.04	N.31 15 30 E.	665.11
3	32 37 02.61	91 02 44.01	N.19 26 00 E.	950.27
4	32 37 11.48	91 02 40.31	N.37 15 52 E.	760.25
5	32 37 17.47	91 02 34.93	N.30 34 00 E.	900.10
6	32 37 25.14	91 02 29.58	N.17 31 45 E.	849.14
7	32 37 33.15	91 02 26.59	N. 1 18 00 W.	845.30
8	32 37 41.50	91 02 26.82	N. 4 15 03 E.	950.06
9	32 37 50.88	91 02 26.00	N. 8 56 40 E.	744.25
10	32 37 58.16	91 02 24.65	N.27 13 54 E.	668.42
11	32 38 04.04	91 02 21.07	N.22 25 13 E.	800.60
12	32 38 11.36	91 02 17.50	N.40 39 39 E.	777.20
13	32 38 17.20	91 02 11.58	N.54 14 38 E.	838.66
14	32 38 22.05	91 02 03.63	N.73 22 23 E.	795.74
15	32 38 24.30	91 01 54.71	N.14 00 04 E.	1,390.35
16	32 38 37.65	91 01 50.78	N.74 39 06 E.	836.20
17B	32 38 39.84	91 01 41.35	N.49 10 55 E.	1,250.8
18	32 38 47.93	91 01 30.28	S.62 41 17 E.	953.7
19	32 38 43.60	91 01 20.37	S.77 33 57 E.	1,032.4
20	32 38 41.40	91 01 08.58	S.49 12 26 E.	736.4

Geographic Positions of Monuments or Angle Points

Monument or Angle Point	Latitude	Longitude	True Bearing to Next Angle Point	Distance Feet
21	32° 38′ 36.64″	91° 01′ 02.06″	S.42° 24′ 55″E.	2,436.8
22	32 38 18.84	91 00 42.84	S.45 25 45 E.	887.2
23	32 38 12.68	91 00 35.45	S.37 10 48 E.	857.5
24	32 38 05.92	91 00 29.39	S.20 25 44 E.	901.6
25	32 37 57.56	91 00 25.71	S.35 08 41 E.	1,515.3
26	32 37 45.30	91 00 15.51	S.18 36 38 E.	825.4
27	32 37 37.56	91 00 12.43	S.11 05 38 E.	791.0
28	32 37 29.88	91 00 10.65	S.17 48 44 E.	785.6
29	32 37 22.48	91 00 07.84	S. 7 11 03 E.	1,703.2
30	32 37 05.76	91 00 05.35	S. 5 17 45 W.	834.3
31	32 36 57.54	91 00 06.25	S.28 30 26 W.	860.3
32	32 36 50.06	91 00 11.05	S.15 09 30 E.	759.1
33	32 36 42.81	91 00 08.73	S.17 47 47 W.	1,656.9
34	32 36 27.20	91 00 14.65	S.42 26 12 W.	716.2
35	32 36 21.97	91 00 20.30	S.30 20 11 W.	872.3
36	32 36 14.52	91 00 25.45	S.31 11 56 W.	1,187.4
37	32 36 04.47	91 00 32.64	S.45 04 26 W.	768.5
38	32 35 59.10	91 00 39.00	S.53 33 10 W.	794.5
39	32 35 54.43	91 00 46.47	S.44 03 56 W.	784.8
40	32 35 48.85	91 00 52.85	S.52 09 41 W.	1,622.8
41	32 35 39.00	91 01 07.83	S.60 15 21 W.	937.1
42	32 35 34.40	91 01 17.34	S.61 44 23 W.	875.2
43	32 35 30.30	91 01 26.35	S.70 05 50 W.	1,041.9
44	32 35 26.79	91 01 37.80	S.58 31 11 W.	901.9
45	32 35 22.13	91 01 46.79	S.84 07 48 W.	958.2
46	32 35 21.16	91 01 57.93	S.52 52 15 W.	738.4
47	32 35 16.75	91 02 04.81	S.23 16 03 W.	699.7
48	32 35 10.39	91 02 08.04	S.40 35 03 W.	1,461.2
49	32 34 59.41	91 02 19.15	S.51 45 00 W.	1,830.0
50	32 34 48.20	91 02 35.94	S.62 30 00 W.	3,210.0
51	32 34 33.54	91 03 09 22		

Total distance along the boundary line from monument zero to angle point No. 51 is 52096 feet, equals 9.87 miles.

Geographic Positions of stations on the reference line run along the levee with ties to P. B. M. 96/1, P. B. M. Albemarle, P. B. M. 97/a and P. B. M. Bellevue. Each station is marked by a wooden post six inches square set firmly in ground.

Station	True Bearing to next station	Distance-Feet to next Station	Latitude	Longitude
P. B. M. 96/1	S.11° 18′ 07″W.	1,537.05	32° 38′ 24.04″	91° 03′ 59.38″
484	N.84 38 13 E.	1,694.95	32 38 09.13	91 04 02.90
485	N.45 07 01 E.	1,831.24	32 38 10.69	91 03 43.16
486	N.69 46 58 E.	3,164.55	32 38 23.48	91 03 27.99
487	N.65 20 21 E.	1,356.15	32 38 34.30	91 02 53.26
488	N.24 21 26 E.	1,185.50	32 38 39.90	91 02 38.85
489	N.78 13 23 E.	6,093.49	32 38 50.58	91 02 33.14
490	S.73 00 34 E.	1,127.40	32 39 02.89	91 01 23.38
491	S.63 39 42 E.	941.81	32 38 59.63	91 01 10.77
492	S.53 39 20 E.	2,952.70	32 38 55.49	91 01 00.90
493	S.44 06 51 E.	2,627.38	32 38 38.18	91 01 33.09
494	S.14 48 07 E.	936.93	32 38 19.51	91 00 11.70
495	S.35 34 01 W.	644.21	32 38 10.55	91 00 08.90
496	S.20 16 04 E.	2,054.71	32 38 05.36	91 00 13.29
497	S.70 53 35 E.	433.61	32 37 46.29	91 00 04.97
498	S.24 25 16 E.	705.13	32 37 44.88	91 00 00.18

FOLD-OUT IS TOO LARGE TO BE FILMED

Station	True Bearing to next station	Distance-Feet to next Station	Latitude	Longitude
499	S.37° 36′ 27″E.	2,379.40	32° 37′ 38.53″	90° 59′ 56.77″
500	S.33 17 54 E.	693.60	32 37 19.88	90 59 39.79
501	S. 1 58 55 W.	2,869.10	32 37 14.14	90 59 35.34
502	N.74 06 47 E.	197.80	32 36 45.77	90 59 36.51
P. B. M. Albemarle			32 36 46.30	90 59 34.28
502	S.23 22 47 W.	720.00	32 36 45.77	90 59 36.51
503	S.29 03 50 W.	2,578.60	32 36 39.22	90 59 39.85
504	S.56 35 31 W.	2,030.10	32 36 16.92	90 59 54.49
505	S.37 04 34 W.	3,835.15	32 36 05.86	91 00 14.30
506	S.16 32 00 E.	983.43	32 35 35.58	91 00 41.33
P. B. M. 97/a			32 35 26.25	91 00 38.06
506	N.69 34 15 W.	820.53	32 35 35.58	91 00 41.33
507	S.37 46 00 W.	4,417.25	32 35 38.42	91 00 50.32
508 eccentric	S.31 51 30 W.	2,700.00	32 35 03.87	91 01 21.93
509	S.48 31 00 W.	2,014.77	32 34 41.18	91 01 38.58
510	S.41 31 42 E.	100.38	32 34 27.97	91 01 56.22
P. B. M. Bellevue			32 34 27.23	91 01 55.44

Total distance 54345 feet—10.3 miles.

Geographic Positions of Stations on the tie line from B. M. Noah to Monument No. 3 of the Louisiana-Mississippi Boundary line.

Station	True Bearing to next station	Distance-Feet to next Station	Latitude	Longitude
B. M. Noah	N.67° 59′ 07″W.	401.93	32° 36′ 39.18″	91° 01′ 33.42″
4 N	N.68 37 39 W.	1,300.25	32 36 40.67	91 01 37.78
3 N	N.68 36 40 W.	1,673.91	32 36 45.36	91 01 51.93
2 N	N.68 37 57 W.	1,609.09	32 36 51.40	91 02 10.15
1 N	N.68 37 34 W.	1,500.34	32 36 57.20	91 02 27.67
Boundary Line Monument No. 3			32 37 02.61	91 02 44.01

A statement of the time employed and the expense incurred in the performance of the work will be the subject of a later report. In compliance with the terms of the decree, 10 copies of the report with map have today been filed with the Clerk of the Court. Fifteen additional copies of the report with map have been filed with the Clerk of the Court for use of such interested parties as may apply for them.

Respectfully submitted,

SAMUEL S. GANNETT,
Commissioner.

Washington, D. C., May 17, 1933.

(3265)

SUPREME COURT OF THE UNITED STATES.

No. 8, Original.—October Term, 1930.

State of Louisiana, Complainant,
vs.
State of Mississippi, Defendant.

[February 2, 1931.]

Mr. Justice Roberts delivered the opinion of the Court.

The bill seeks a decree locating and establishing a portion of the boundary line of Louisiana and Mississippi, between Willow Point and adjacent premises in the former, and lands in Township 9 North, Range 8 West, in the latter state, where the Mississippi River forms what is known as Albemarle Bend.

In 1823 the thread of the navigable channel of the river was the true boundary line, and is correctly located by surveys made by the Mississippi River Commission in 1823 and 1824. At that time the territory now in dispute was within Mississippi and consisted of an island (then known as Tullos Island, which lay to the east of the thread of the river and was separated from the Mississippi mainland by a chute) and certain portions of the mainland east thereof. Prior to 1882 the island was renamed "Island No. 98".

The complainant asserts:

That between 1823 and 1913 erosions occurred which ate away all of Tullos Island and large portions of the Mississippi shore;

That accretions attached to the Louisiana shore;

That the river, and consequently the interstate boundary line, gradually and imperceptibly moved eastwardly and northwardly a distance of five or six miles;

That the accretions to the Louisiana shore became the territory of complainant;

That in 1912-1913 the river suddenly changed its course, cut across the bar formed by the said accretions on the Louisiana side, and by avulsion formed a new channel to the west, severing from

the Louisiana shore a large portion of the accretion theretofore formed;

That as the last change was by avulsion the boundary line remained and now is at the thread of the extreme easterly and northeasterly channel of the river as it was in 1912-1913.

The Mississippi River Commission surveyed the river in 1882, and admittedly its chart made from that survey correctly shows the shore lines and bar lines and other relevant data as of that year. A further survey was made by the Commission, and a plotting taken therefrom in 1894, and a similar survey and plotting shows the river as it was in 1912-13. These demonstrate that the river had moved to the eastward from its position in 1823, each survey placing it considerably east of its location at the time of the next earlier one.

The respondent avers:

That the complainant has failed to show how the change in the channel came about between the surveys of 1823-1824 and that of 1882;

That as complainant has the burden of showing that the change took place by accretion rather than by avulsion, and has failed to carry that burden, it can make no claim for the land added to the Louisiana shore prior to 1882;

That subsequent to 1882 the river above the point in controversy cut into the Louisiana bank above and along the northern border of Willow Point, was deflected in a northeasterly direction, so that instead of striking Tullos Island it curved around the head of what then remained of the island (as it is shown on the survey of 1882) and enlarged the chute between that island and the Mississippi shore, forming a new channel there;

That subsequently the old channel, which had run to the west of the island, filled up, and thereby the island became attached to the Louisiana shore;

That the new channel running to the north and east of what was left of Tullos Island added by accretion to the easterly side of the island and cut farther into the Mississippi shore until 1912-13, when the river suddenly abandoned the new channel and returned to the old 1882 channel;

That thereby what theretofore had been Tullos Island again became an island separated from the Louisiana shore, although

greatly enlarged over its dimensions in 1882 by the accretions added to its easterly side.

As an additional and alternative defense Mississippi asserts that its title to the disputed territory cannot now be assailed because of long continued possession and exercise of sovereignty and dominion, with the acquiescence of Louisiana.

On the issues thus made testimony was taken before a commissioner, and was referred to Thomas G. Haight, a member of the bar of this court, as special master, with direction and authority to report his findings of fact, conclusions of law, and recommendations for a decree. He has filed his report, recommending a decree in accordance with the contentions of the complainant. The respondent has filed exceptions.

The parties are in agreement as to the applicable legal principles. The exceptions raise no questions of law, but go solely to the correctness of the master's fact findings and conclusions. We have, therefore, examined the proofs, consisting of documentary evidence and oral testimony, to determine whether the master's findings are in accord therewith. In brief he finds:

1. That the changes between 1823 and 1912-13 were by gradual erosion of the Mississippi shore and gradual accretions to the Louisiana shore, and not by avulsions.

2. That the change in 1912-13 was due to an avulsion.

3. That the accretions up to the avulsion of 1912-13 and thereafter, so long as the current flowed in the easterly channel as it was prior to the avulsion, became Louisiana territory.

4. That the avulsion of 1912-13 did not change the boundary line.

5. That Mississippi did not by possession or exercise of sovereignty or dominion acquire right or title to the disputed territory; and as a consequence of the foregoing,

6. That the present true boundary line is the middle of the navigable channel prior to the avulsion of 1912-13, as that channel was when the current ceased to flow therein by reason of the formation of the new channel by the avulsion of 1912-13, and the filling of the former channel.

There is no challenge of findings 2 and 4. The whole controversy revolves about the correctness of findings 1 and 3 as to the physical changes which actually took place, and finding 5 as to the exercise of dominion by the respondent.

I. With respect to the physical changes which have taken place in the location of the Mississippi River, the proofs may conveniently be divided into two parts,—those which apply to the period prior to 1882, and those which have to do with that between 1882 and 1912.

It was impossible to procure much or very persuasive oral evidence as to conditions prior to 1882. The master had before him, however, the charts of the Mississippi River Commission of 1823-24 and of 1882, and plats from surveys made in 1866 and 1870. By comparing these and noting facts deducible from them, he concluded that the river moved eastward from its 1823 channel to its 1882 channel gradually and not by avulsion. He found that the Louisiana shore was eroded above Albemarle Bend and extended to the eastward by accretions at Willow Point. He further found that while this was occurring the eastward sweep of the river gradually cut away the greater portion of Tullos Island. During all of this time the river remained of approximately the same width, thus negativing Mississippi's contention as to the possibility of the change in the channel being sudden and by avulsions of nature. His conclusions were also supported by the relative locations of sand bars and river banks at the dates of the successive surveys. In 1882 a towhead, so-called, had been formed on the sandbar created by the accretions to the Louisiana shore, which was named "Newman's Towhead" because the owner of the Louisiana mainland at the point from which the bar had made out was a man named Newman. On this towhead there had sprung up a growth of willow and cottonwood timber.

From an examination of the proofs and a checking of the processes of reasoning and deduction adopted by the master we are satisfied that his findings on this branch of the case are justified; and that the contention of Mississippi that he has relied upon mere inferences, which do not rise to the dignity of affirmative proofs, is not well founded.

A more serious controversy, complicated by conflicting oral testimony, is disclosed as to what occurred between 1882 and 1912. The complainant adduced proofs tending to show that the eastward and northeastward movement of the channel continued after 1882. These further tend to show that by 1894 all that was left of Tullos Island in 1882 had been washed away, and that the main channel of the river was in part where that island had formerly

been and in part east of its location; that the eastward movement of the river and the direction of the current to the east eroded a substantial portion of the former Mississippi mainland; that from 1894 to 1912 this movement eastward continued until whole sections of Township 9 North, Range 8 West, in Mississippi, had caved away; that in periods of high water in 1912 and 1913 the river overflowed the bar extending out from the Louisiana shore to Newman's Towhead and took a southwesterly course, cutting across the accretions theretofore formed and leaving the eastern portions of the bar, including the towhead, an island; that a portion of this new island occupied the location of what was formerly Tullos Island. Thus complainant claimed that, prior to 1912, the old island had been washed away by the eastward progress of the river channel, and had been replaced by accretions along the westerly side of the river adjacent to Louisiana.

Respondent offered evidence tending to show that while the river reached the extreme easterly position averred by the complainant, it did so not by washing away Tullos Island and moving eastwardly over the former location of that island, but by swinging around to the north and east of that island, enlarging and scouring out the former chute or narrow channel between the island and the Mississippi mainland; that thereafter the river added by accretions to the eastern side of what was left of the island, and that the old channel to the west of it gradually filled up.

If the weight of the evidence is with the complainant the territory in controversy belongs to Louisiana; if the contrary be found, the disputed territory, originally within the boundaries of Mississippi, so remains.

There is much conflicting testimony as to the location of the main channel between 1890 and 1912; as to whether Tullos Island was scoured away; as to the character of the soil and timber on the island; as to whether the alleged clay soil of the island disappeared and was afterwards replaced by a sandbar formed by accretion; as to whether the original virgin timber which was on it fell into the river and disappeared with it, or in part still stands as mute evidence that the island was never entirely washed way.

Mindful of the fact that the special master did not see and hear the witnesses, we have felt it incumbent upon us to study the proofs, documentary and oral, to examine the deductions made therefrom, and thereby to test the stated conclusions. The pre-

ponderance of the evidence supports the master's finding that from 1882 to 1894 the river moved eastwardly, caving away Tullos Island along its western shore, until it had wiped out that island; that the continued eastward movement caved the Mississippi shore, at the same time adding to the accretions which had already formed on the Louisiana shore opposite Willow Point; and that the bar was continuous from the old high bank on the Louisiana side to the end of Newman's Towhead. Thus by 1912 an area five or six miles in length and several miles in width had been added to the Louisiana shore.

As matters stood in 1912 and 1913, the boundary line between the states was the thread of the navigable channel far to the eastward of the present channel. As above stated, there is no controversy as to what occurred in 1912-13. The river by a sudden avulsion made a short-cut to the west of Albemarle Bend, as it then was; and subsequently the channel in the old bend to the eastward of the new channel silted and filled until it entirely closed at the upper end. This sudden avulsion did not change the boundary line between the states.

II. It remains to discuss the proofs bearing upon the master's fifth finding. The survey of 1882 discloses that accretions attached to the Louisiana shore had at that time extended to the eastward so far as to cover a portion of the territory formerly belonging to Mississippi. The 1894 survey shows these accretions covering a much larger portion, and that of 1912-13 shows a still greater extension over former Mississippi territory. The Newmans, who lived on Willow Point, Louisiana, had a house about one hundred yards east of the 1824 mainland, between the levee and the stream, and just above Albemarle Bend proper. It must, therefore, have been built on accretions formed subsequent to 1824. It caved into the river in 1905. The master found that the possession of the Newmans extended at least to those accretions which had attached to the shore up to the time that their house was destroyed. The disputed territory is low alluvial land subject to overflow at times of high water and is not protected by levees or dikes. Upon portions of it cottonwood and willow timber has grown. The land is not fitted for cultivation or settlement except in a haphazard way. It took its name from the Newman family and was known as the "Newman Towhead". After the avulsion of 1912-13 severed a large portion of it from the Louisiana shore the successors in title

of the Newmans leased the cut-off portion of it, lying to the eastward of the new channel, to one Towns. The lease described it as part of the Bell and Willow Point plantations, located in East Carroll Parish, Louisiana. It was occupied under the lease for six or eight years for the pasturing of hogs.

The first knowledge that complainant's witnesses had of any claim on behalf of Mississippi or its citizens was shortly before this action was brought. It appears that in or about 1923 Mississippi sold some of the land in question for delinquent taxes. On the assessment rolls of Issaquena county, Mississippi, the purchasers at these tax sales first appeared as owners in 1925-1926. The repondent put in evidence assessment rolls for certain years between 1848 and 1926. They show that after 1883 certain of the lands within the original boundary of Tullos Island are marked "in river", or "in Mississippi River", and from time to time these lands so designated were assessed for taxation, sometimes for nominal amounts and sometimes for substantial sums. At times "Island No. 98" appears as a separate item on the rolls, although the surveys show that at those times the island had disappeared. It is described as of greatly varying sizes in different years. The evidence to be drawn from this source is quite contradictory and fails to show any dominion by Mississippi over the disputed territory.

The record sustains the master's finding that there is no proof that Louisiana or its citizens knew of or acquiesced in any purported dominion of Mississippi over the disputed territory. The respondent has failed to meet the test laid down in *Michigan* v. *Wisconsin*, 270 U. S. 295, with respect to exercise of sovereignty and dominion over the disputed territory, and acquiescence by complainant in such alleged possession. The master's fifth finding is sustained.

A decree should be entered as recommended by the master, appointing a commission to locate the thread of the main channel of the Mississippi River as the same was immediately prior to the avulsion of 1912-13; and the line when so located is decreed to be the boundary between the states, between latitude 32° 39′ on the north and the division line between Issaquena and Warren Counties, Mississippi (as extended westward), on the south. The parties are accorded forty days within which to submit a decree in accordance with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES.

No. 8, Original.—October Term, 1930.

The State of Louisiana, Complainant,
vs.
The State of Mississippi, Defendant.

[April 13, 1931.]

Decree.

This cause coming on for hearing by this Court upon the report of Thomas G. Haight, Special Master appointed by this Court, and herein filed, and upon the exceptions filed herein by the State of Mississippi, defendant, to said report of the Special Master, including the findings of fact, conclusions of law, and recommendations for a decree, and also upon all pleadings and exhibits thereto heretofore filed by both complainant and defendant, and also upon all depositions of witnesses and documentary and record evidence adduced, preferred, filed, and submitted both by complainant and defendant and upon all briefs of counsel both for complainant and defendant heretofore filed and submitted; and thereupon, on February 2nd, A. D. 1931, this Court having rendered an opinion sustaining all the findings and recommendations of the Special Master, and directing that a decree should be entered as recommended by the Special Master; and the Court being fully advised in the premises:

It is thereupon considered, and now ordered, adjudged and decreed by this Court, as follows, to wit:—

1. That the bill of complaint has been sustained by sufficient and legal evidence, and that complainant, the State of Louisiana, is at law and in equity entitled to the relief prayed for.

2. That the report of Thomas G. Haight, Special Master, be and the same is hereby approved, sustained, and confirmed by this Court, and that the exceptions to said report filed by the State of Mississippi be and the same are hereby overruled.

3. That immediately prior to the avulsion of 1912-1913 the boundary line between the State of Louisiana and the State of Mississippi between latitude 32° 39′ on the North and the division line between Issaquena and Warren Counties, Mississippi, (as extended westward), on the South, was at the place and line which was the thread of the main channel of the Mississippi River as it then ran; and that, the current having since ceased to flow in part of said channel as it existed prior to said avulsion, because of the new channel produced thereby, at this time the true boundary line between the State of Louisiana and the State of Mississippi, in that part and so much of the above area as was affected by the avulsion (between said North and South points), is the middle of the navigable channel of the Mississippi River as said channel was located at the time when the current ceased to flow therein because of the new channel produced by the avulsion of 1912-1913.

4. That Samuel S. Gannett, geodetic and astronomic engineer, of Washington, D. C., is hereby named and appointed as commissioner, with power, authority and instructions to run, locate, plat, and mark by suitable permanent boundary markers said boundary line, as above defined, by the use of the most accurate method now known to science and applicable in that locality, between said States between said North and South points, and to make and file in this Court as soon as practicable a full and accurate report of his findings, survey, and plat, and that the same be submitted to this Court for confirmation. And he shall file with his report the field notes of his survey, showing the method used by him in ascertaining and locating the line of the boundary, and a map showing the boundary line as run and marked by him; also 10 copies of his report and map. Said line when ascertained and located in accordance with this decree and approved and confirmed by the Court, is the boundary line between the State of Louisiana and the State of Mississippi between the North and South points hereinabove mentioned.

5. Before entering upon his work the commissioner shall take and subscribe his oath to perform his duties faithfully and impartially. He shall prosecute the work with diligence and dispatch, and shall have authority to employ such assistants as may be needed therein; and he shall include in his report a statement of the work done, the time employed, and the expenses incurred.

6. The work of the commissioner shall be subject in all its parts to the approval of the Court. One copy each of the commissioner's report and map shall be promptly transmitted by the clerk to the Governors of the two States; and exceptions or objections to the commissioner's report, if there be such, shall be presented to the Court, or, if it be not in session, filed with the clerk, within forty days after the report is filed.

7. That the sum to be allowed the commissioner hereby appointed, in payment of his services and reimbursement of his expenses, shall be fixed and allowed after the submission to this Court and confirmation by it of his report, findings, survey and plat.

8. If, for any reason, there occurs a vacancy in the commission when the Court is not in session, the same may be filled by the designation of a new commissioner by the Chief Justice.

9. That there is allowed and awarded to Thomas G. Haight, Special Master, the sum of $2500 for services performed as such Special Master, and the sum of $281.56 for expenditures and disbursements by him as such Special Master in the performance of his duties.

10. That all costs incurred in this suit by both complainant and defendant to and including the date of the rendition of this decree be and the same are hereby taxed and charged against the defendant, State of Mississippi, and are ordered and decreed to be paid by the State of Mississippi; that the costs and expenses that may hereafter be incurred and allowed by this Court in the ascertaining, marking, surveying and platting of the interstate boundary line by the commissioner, in pursuance of this decree, be and the same are hereby ordered and decreed to be paid one-half by complainant and one-half by defendant.

By the Court: